Official Gazette

REPUBLIC OF THE PHILIPPINES

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OFFICIAL WEEK IN REVIEW

April 30.—EARLY this morning the President heard mass at the Guest House. After the mass the President stayed in his bedroom and cancelled all callers. The Guest House was full of callers, mostly government officials and members of Congress who were in Baguio for the three-day holidays.

Upon the advice of his physicians, particularly Dr. Antonio Guytingco, President Garcia stayed in bed.

Dr. Guytingco advised the President to have a complete rest, and, if his ailment does not improve, he may not address the Labor Day rally tomorrow.

Dr. Guytingco said the President may be forced to cancel his engagements if he does not recover from his colds.

President and Mrs. Garcia left for Manila at 2 this afternoon and arrived at the railroad station of Damortis, La Union, an hour later.

At the Damortis railroad station, the President and Mrs. Garcia boarded a special train for Manila. After a brief stop-over at Dagupan, the President and members of his party returned to Manila and arrived in Malacañang at 8:33 this evening.

May 1.—THIS morning President Garcia received James McFarland, chief of the Philippine desk at the U.S. State Department and member of the U.S. panel which concluded the Romulo-Snyder Agreement with the Philippines recently.

McFarland has been in the Philippines two weeks on inspection and was leaving for home in the afternoon. He was accompanied on his courtesy call by Col. V. O. Tiongson, Malacañang financial assistant.

The President also received Labor Secretary Angel Castaño, who briefed him on the Labor Day celebration which he said was the biggest to be held in the Philippines so far.

Secretary Castaño said that over 100,000 people wanted to attend the program in the afternoon at the Araneta Coliseum in Quezon City but only 37,000 will be accommodated inside, and 50,000 will be able to see the program through the television outside the coliseum.

The President expressed regret that owing to his cold he could not accompany the First Lady to the program. He requested Secretary Castaño to represent him and read his Labor Day message to the nation.

The President today mobilized government agencies in an effort to rush all possible assistance and relief to the victims of the Sunday fire which swept through twelve blocks in the business and residential districts of Guinobatan, Albay, causing property losses of more than ₱1 million.

Press Secretary Jose C. Nable said that the President, despite a nagging cold which dogged him during the last days, personally directed Social Welfare Administrator Amparo Villamor to rush relief goods for immediate distribution to the fire victims. At the same time the President directed the Philippine Air Force to coordinate with social welfare workers in transporting relief food and goods. Health Secretary Elpidio Valencia was also directed by President Garcia to look into the health conditions in Guinobatan, especially as to the availability of potable water, in order to avoid the outbreak of an epidemic.

May 2.—PRESIDENT and Mrs. Garcia joined thousands of devotees who trekked to Antipolo, Rizal, this morning and heard mass which ushered in the traditional month-long Antipolo season during which the faithful from all over the country will make pilgrimages to the Virgin of Good Voyage.

The President and the First Lady and their children, Mr. and Mrs. Fernando Campos, were fetched from Malacañang by Sen. Lorenzo Sumulong at 7:30 a.m. and arrived by motor at the Antipolo Church at 8:10 a.m.

On hand to greet the First Family at the entrance of the town were Mayor and Mrs. Isaias Tapales, who headed a large group of local town officials.

At the Antipolo church another large crowd composed of local residents and Catholics from Manila and neighboring towns, as well as officials headed by Sen. Pacita M. Gonzalez and Mrs. Lorenzo Sumulong, gathered to welcome the President and his party.

The *misa de la Reyna* marks the opening of the Maytime Antipolo celebration.

After taking communion and paying homage to the miraculous Virgin, the President and the First Lady inaugurated the newly constructed Antipolo auditorium, where breakfast consisting of *putong pute, cuchinta, suman,* and *mangoes* was served.

Before leaving Antipolo the President thanked Sen. Sumulong and the town officials for the wonderful reception. The presidential party arrived in Malacañang at 10:30 a.m. With the party were Mesdames Daniel Romualdez, Jose Aldeguer, and Macario Asistio.

The President then immediately summoned foreign affairs and national defense officials to a hurried conference in Malacañang.

Called to the huddle were Foreign Affairs Secretary Felixberto M. Serrano, National Defense Secretary Alejo Santos, Sen. Eulogio Balao, and Rep. Bartolome Cabangbang.

The meeting was called presumably to take up the worsening Laotian crisis following a breakdown in negotiations to settle the dispute through peaceful means.

Speculations were raised that the Malacañang conference took up possible Philippine participation in a contemplated action by the Southeast Asia Treaty Organization to quell violence in the tiny Laotian kingdom.

Secretary Serrano, who returned recently from the Council of Ministers meeting of the SEATO, briefed the President and defense officials on the seriousness of the communist subversion in Laos.

Serrano had pointed out that the trouble in Laos may blow up into war, as the United States has started military build-up to implement its commitments with the SEATO in the event peaceful negotiations fail.

President Garcia today directed the Angat River Irrigation System authorities in Bulacan to settle immediately the unpaid wages of some 200 casual laborers hired by the agency in 1950 and 1958.

The Chief Executive issued the directive upon receiving a PCAPE report that the persons affected were small farmers contracted by the agency on a daily basis to dig the ditches through which tapped irrigation water could pass toward the rice fields.

The President was irked by the seemingly unreasonable delay in the settlement of the wages which appear to involve a small sum considering that the total wages due each individual ranges from ₱30 to ₱40 only.

The President observed that although the sum due each person is comparatively small, yet to the small farmers the amount means a lot. He directed Major Teodulo C. Natividad, PCAPE chief investigator, to look into the possibility that persons other than the farmer-payees received the wages by forging signatures.

The President in directing the PCAPE to investigate the possibility of illegal payment was prompted by numerous complaints reaching the Office of the President that the practice is rampant especially when the persons involved are illiterates.

The plight of the 200 Bulacan farmers was brought to the attention of the President through the PCAPE by Pulilan Councilors Marcial Cruz, Amando Galang, and Apolonio Arceo, a Pulilan barrio lieutenant.

This evening the President presided over the meeting of the National Security Council to assess the latest developments in the Laotian crisis.

The Chief Executive called the NSC the other day to a meeting at Camp Murphy after he had been briefed by foreign affairs and defense officials on the seriousness of the Laos situation.

The President, during his conference with foreign affairs and defense officials in Malacañang, expressed his readiness to fulfill the country's commitments with the Southeast Asia Treaty Organization.

Invited to the security parley were top officials of the government, including the leaders of Congress and some members of the Cabinet.

Liberal Party leaders headed by Vice-President Macapagal were also invited to join the discussion involving the threat to the security of the country.

Senate President Eulogio Rodriguez, the President's chief rival for the Nacionalista Party presidential nomination, was also expected to be present.

The President started from Malacañang shortly before 9 p.m. for Camp Murphy.

Upon his arrival the President immediately called the National Security Council meeting to order.

May 3.—THIS morning the President was reported still indisposed. For almost two weeks now, he has been complaining of colds.

Upon the advice of his physician, the President cancelled his scheduled appointments for the day except his meeting with the Security Council.

He directed Foreign Affairs Secretary Felixberto M. Serrano to represent him before the 7th Asian Peoples Anti-Communist League Conference held at the University of Santo Tomas.

President Garcia today reaffirmed his stand in the fight against communism in order to preserve the survival of freedom, civilization, and human rights in the Free World.

The President made the reaffirmation as he assured the Asian People's Anti-Communist League during its 7th conference at the UST's college of medicine, that the prestige and power of his office will support any scheme of defense against communism that may be evolved during its deliberations.

The Chief Executive, who was introduced by Rep. Cornelio T. Villareal of Capiz as a loyal friend of Asian peoples and a courageous fighter in the continued struggle for freedom and democracy in Asia, was represented by Foreign Affairs Secretary Felixberto Serrano, who read the President's speech.

President Garcia was later awarded a testimonial plaque for his "unstinted, unequivocal defense of freedom with justice against the forces of communism, not only in the Philippines but in Southeast Asia and the Pacific."

Others who received similar plaques were Cardinal Santos, Senator Dodd, and Chief Delegate Ku of the Republic of China.

United States Senator Thomas J. Dodd, who gave the keynote address, paid tribute to the late President Ramon Magsaysay under whose leadership, he said, "freedom had made its most significant victory over communism in the Philippines."

Other speakers at the opening ceremonies were Rep. Ramon D. Bagatsing of Manila, APACL league council chairman and PACOM president, who gave the opening speech; Ku Cheng Kang, APACL immediate past chairman and chief delegate of the Republic of China; Rep. Inocencio V. Ferrer of Negros Occidental, who introduced Senator Dodd; and Rufino J. Cardinal Santos, who delivered the invocation.

Over 1,000 composed of members of the diplomatic corps, Armed Forces of the Philippines, and the general public, witnessed the opening ceremonies, besides the 44 delegates from 18 countries and 23 obsercers from six organizations.

Countries represented were Australia, Burma, Nationalist China, Hongkong, Iran, Japan, Jordan, Republic of Korea, New Zealand, Thailand, Turkey, and the Republic of Vietnam.

May 4.—PRESIDENT Garcia ignored the advice of his physician and stayed late last night up to early this morning presiding over the meeting of the National Security Council.

Dr. Antonio Guytingco, the President's personal physician, was seen fidgeting outside the War Room of Camp Murphy, as the security council conference which started at 9 last night extended up to almost 2 this morning.

The President's physician told newsmen: "How can the President recover from his cold?"

But the Chief Executive waded through the discussion on the political and military aspects of the explosive Laotian crisis which blew hot and cold within 24 hours this day.

After a late night, the President stayed in bed until this morning. He cancelled all his scheduled appointments upon the advice of his physician.

However, he conferred with Executive Secretary Natalio P. Castillo and took up pending state papers.

Secretary Castillo brought up pending appointments, including those in the judiciary. However, up to press time this evening, no appointments were announced by Malacañang.

This evening the President received Press Secretary Jose C. Nable, who took up with the Chief Executive pending issues.

The President stayed the whole day today at the Palace.

President Garcia today ordered a full-dress investigation of a complaint that NARIC rice and corn grit, supposedly for sale at lower prices, are allegedly being channelled to hoarders and blackmarketeers in Cebu province, threatening to create a more acute shortage of the cereal in that area.

The Chief Executive, who showed signs of impatience over the alleged failure of the NARIC, police, and other government agencies assigned to curb the reportedly rampant hoarding and blackmarketing of the staple food, said in a strongly worded directive to the PCAPE that he wants a thorough investigation of the charges so that the guilty parties, whether public officials or private businessmen, be prosecuted to the "fullest extent" of the law.

Justice Buenaventura Ocampo, PCAPE chairman, informed the Chief Executive that several provinces in the South sent similar complaints to the PCAPE. Among the provinces affected by the "shortage" are Negros Occidental, Negros Oriental, Iloilo, Capiz, Cebu, Samar, Leyte, Romblon, Zamboanga del Norte, Cotabato, Agusan, and Palawan.

A wire charging the NARIC agency in Cebu with channelling the cereal to hoarders and linking private businessmen to the irregularity was sent to the President by Ramon D. Abellanosa, former vice-mayor of the Cebu City.

In his wire to the President, Abellanosa said that the NARIC is conducting the distribution of the staple on a very limited scale allegedly to cover-up irregular transactions to the prejudice of thousands of consumers banking on cheap NARIC rice and corn grit for subsistence.

Abellanosa declared that he is ready to substantiate his charges and that he is willing to appear before any investigating body to discuss point by point the defects of the NARIC method of distribution in Cebu.

Abellanosa branded the system as "faulty" and "apparently designed to benefit a few businessmen rather than the population in general as envisioned by President Garcia."

May 5.—THIS morning the President received United States Ambassador John D. Hickerson, and later the executives of Lufthansa Aircraft Corporation who came to pay their respects before returning to Germany.

Ambassador Hickerson informed the President during his courtesy call that he was very much impressed by his recent trip to the South, which was both enligthening and eye-opening. The American ambassador said he was

impressed by the economic potentialities as well as the rapid development of the southern islands, especially Mindanao.

The Lufthansa executives who are scheduled to leave tomorrow morning after attending the inauguration of their local office, expressed the hope that they could contribute to the economic progress of the Philippine and at the same time promote closer relations between their country and the Philippines.

The President expressed his gratitude for their decision to participate jointly with the Filipinos in the economic development of the country, and assured them that their venture would be mutually profitable.

The Lufthansa executives who called on the Chief Executive at Malacañang were Sakes Director and Mrs. J. Von Frankenberg, Far East Regional Director H. Bank, Far East Sales Development Manager C. Dehio, Advertising and Publicity Manager Mrs. Linde Lo; and President A. V. Rocha, Manager R. Altonaga and Treasurer John Rocha of Rocha and Company, local representatives of Lufthansa.

President Garcia appointed today Justice Querube C. Makalintal as Presiding Justice of the Court of Appeals.

The President also appointed Judges Juan P. Enriquez, Gustavo F. Victoriano, Jose S. Rodriguez, Manuel M. Mejia, Julio Villamor, and Natividad Almeda Lopez as Associate Justices of the Court of Appeals.

Justice Makalintal is the most senior of the present justices in the court of appeals. He succeeds Presiding Justice Dionisio de Leon, who was promoted recently to the Supreme Court.

With the exception of Lopez, the other five newly appointed associate justices are at present judges of the court of first instance. Lopez is judge of the Juvenile and Domestic Relations Court.

Enriquez is judge of the court of first instance, branch 8, of Manila; Victoriano is judge of the court of first instance of Negros Occidental; Mejia is judge of the court of first instance of Bulacan; Rodriguez is district judge, fourth branch, of the court of first instance of Cebu; and Villamor is judge of the court of first instance of Manila.

The appointments of the presiding justice and six associate justices were immediately submitted to the Commission on Appointments for confirmation.

The President today ordered the release of ₱1 million from the public works fund for the construction of the Buntun bridge crossing the Cagayan River.

The construction of the bridge which will connect Cagayan with Mountain Province was promised by President Garcia during his visit to Cagayan last December and is in accordance with the road building program of the Administration.

Completion of the Buntun bridge will provide the people of the two provinces with easier and speedier means of transportation and is expected to develop more fully the social and commercial contacts between the two provinces.

An initial amount of ₱200,000 has already been released and the first construction phase of driving piles has started.

The President also ordered today Budget Commissioner Faustino Sy-Changco to release immediately the sum of ₱50,000 from his contingent fund for the relief of the victims of the fire which hit barrio Paraiso in Fabrica, Negros Occidental, yesterday.

The directive for the release of the intial amount was given through Executive Secretary Natalio P. Castillo, following a report made by Gov. Valeriano M. Gatuslao and Rep. Vicente Gustillo of Negros Occidental.

The President also directed the Social Welfare Administration to extend all possible aid to the fire victims.

The six-hour fire razed to the ground the entire community of Paraiso, rendering some 10,000 persons homeless and destroying property estimated at ₱5 million. Paraiso is the trading center of northern Negros and is considered as "one of the tickest populated communities in the Philippines."

May 6.—PRESIDENT Garcia spent this day studying some important bills which were brought to his Quezon City residence by Legislative Secretary Vicente Logarta for certification to Congress as urgent.

The Chief Executive went through the batch, together with Logarta. Later he received Malacañang Protocol Officer Minister Manuel Zamora to discuss the courtesy call of General Anastacio Somoza Debayle, chief of the Armed Forces of Nicaragua.

President Garcia today paid tribute to the "dauntless' spirit of Robert E. McCann, a China-born American businessman and a victim of communist tyranny and oppression in the China mainland, who died of cancer in Clark airforce base last Thursday.

In a letter extending his sympathies to McCann's widow, the President expressed the hope "that his death will inspire all free men the world over."

The Chief Executive, in giving praise to McCann, said that "though afflicted with incurable cancer, he beat the seemingly endless years, ten of them, and literally turned back the pendulum of human lifetime."

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG
RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 746

EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 208, DATED OCTOBER 5, 1937, A PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE BARRIO OF GUIDAROHAN, MUNICIPALITY OF TALISAY, PROVINCE OF CEBU, ISLAND OF CEBU, AND DECLARING THE SAME OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE MINING ACT

WHEREAS, Mrs. Benedicta Cabahug has requested the exclusion of a certain area containing approximately 291.7038 hectares from Talisay–Minglanilla Forest Reserve established under Proclamation No. 208, dated October 5, 1937;

WHEREAS, according to the findings of the Director of Mines, concurred in by the Secretary of Agriculture and Natural Resources, the area sought to be excluded from the Talisay–Minglanilla Forest Reserve appears to be highly mineralized and more valuable for its mineral contents; and

WHEREAS, under the provisions of section fourteen of Commonwealth Act Numbered one hundred and thirty-seven, otherwise known as the Mining Act, lands within reservations for purposes other than mining, which, after such reservation is made, are found to be more valuable for their mineral contents than for the purpose for which the reservation was made, may be withdrawn from such reservationn by the President of the Philippines only with the concurrence of the Congress.

NOW, THEREFORE, upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section fourteen of Commonwealth Act One hundred and Thirty-seven, otherwise known as the Mining Act, I, Carlos P. Garcia, President of the Philippines, do hereby exclude from the operation of Proclamation No. 208, dated October 5, 1937, the following described parcel of land and declare the same open to disposition under the provisions of the Mining Act,

as amended, situated in the barrio of Guidarohan, municipality of Talisay, province of Cebu, more particularly described as follows:

Beginning at a point marked 1 on the attached plan, being East, 300.00 meters from Mon. 16, Talisay–Minglanilla Estate, thence West, 300.00 meters to point 2; thence West, 1,255.86 meters to point 3; thence No. 31° 05′ W., 1,309.37 meters to point 4; thence N. 35° 49′ E., 466.46 meters to point 5; thence East 1,958.91 meters to point 6; and thence South, 1,500.00 meters to the point of beginning; containing an approximate area of 2,917,038 square meters.

NOTE: (Corner 2 is identical to Monument No. 16, and corner 4 is identical to Monument 19.)

The cutting, removal, and utilization of the timber and other forest products therefrom shall be in accordance with the provisions of the forest laws and regulations, and at any time the said area within the forest reservation shall not be utilized for mining purposes, the same shall revert as part of the forest reserve.

This proclamation shall take effect only upon the concurrence of the Congress of the Philippines.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 21st day of April, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 747

DECLARING APRIL 30, 1961, AS WOMEN'S RIGHTS DAY

In order that our people may know and appreciate the important role played by women in the economic, social, and political progress of the nation, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare April 30, 1961, as Women's Rights Day.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 26th day of April, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 347

AUTHORIZING THE CENTRAL BANK OF THE PHILIPPINES TO ACT AS DEPOSITORY TO RECEIVE AND HOLD NOTES FOR THE ACCOUNT OF, AND SUBJECT TO, THE ORDER OF THE INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA)

WHEREAS, pursuant to the provisions of Republic Act No. 2687, the Republic of the Philippines has decided to become a member of the International Development Association (IDA);

WHEREAS, the International Development Association requires evidence of the Central Bank's authority from the Philippine Government to act as depository for said Association;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby authorize the Central Bank of the Philippines to act as depository to receive and hold notes for the account of, and subject, to the order of the International Department Association (IDA).

Done in the City of Manila, this 26th day of April, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines
Third Session

H. No. 4169

[REPUBLIC ACT No. 2976]

AN ACT GRANTING MR. ELPIDIO CASTRO A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT COASTAL, LAND BASED, AERONAUTICAL AND LAND MOBILE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to Elpidio Castro a temporary permit to construct, establish, maintain and operate in the Philippines, at such places as the grantee may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point, coastal, land based, aeronautical and land mobile radio stations for the reception and transmission of wire less messages on radiotelegraphy or radiotelephony, each to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said radio stations or any of them on lands of the public domain upon such terms and conditions as he may prescribe.

SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction of at least one of the said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 4. The grantee shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, establish, maintain and operate said radio stations at such places within the Philippines as the interest of the grantee and of his trade and business may justify.

SEC. 5. This temporary permit shall not take effect until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder, but the grantee may use the international distress frequency of five hundred kilocycles and the high distress frequency of eight thousand two hundred eighty kilocycles whenever necessary.

SEC. 6. No fees are chargeable, as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 7. The grantee shall so construct and operate his radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 8. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of his radio stations.

SEC. 9. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder, to any person, natural or juridical, nor merge with any other person, without the approval of the Congress of the Philippines first had. Any person, natural or juridical, to which this temporary permit may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person to which this temporary permit is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to such person.

SEC. 10. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of the said stations during the continuance of the national emergency.

SEC. 11. This temporary permit shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 12. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4175

[REPUBLIC ACT NO. 2977]

AN ACT GRANTING MR. FRANCISCO ARCILLA A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT, COASTAL, AERONAUTICAL, LAND BASED AND LAND MOBILE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to Mr. Francisco Arcilla, a temporary permit to construct, establish, main-

tain and operate in the Philippines, at such places as the grantee may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point, coastal, aeronautical, land based and land mobile radio stations for the reception and transmission of wireless messages on radiotelegraphy or radiotelephony, each to be provided with radio transmitting apparatus and radio receiving apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said radio stations or any of them on lands of the public domain upon such terms and conditions as he may prescribe.

SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction of at least one of the said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 4. The grantee shall not engage in domestic business of telecommunication in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, establish, maintain and operate said radio stations at such places within the Philippines as the interest of the grantee and of his trade and business may justify.

SEC. 5. This temporary permit shall not take effect until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder, but the grantee may use the international distress frequency of five hundred kilocycles and the high distress frequency of eight thousand two hundred eighty kilocycles whenever necessary.

SEC. 6. No fees are chargeable, as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 7. The grantee shall so construct and operate his radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 8. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of his radio stations.

SEC. 9. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder to any person, natural or juridical, nor merge with any other person, natural or juridical, without the approval of the Congress of the Philippines first had. Any person, natural or juridical, to which this temporary permit may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person to which this temporay permit

is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to such person.

SEC. 10. A special right is hereby reserved to the President of the Philippines in time of war, insurrection, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 11. This temporary permit shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 12. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4188

[REPUBLIC ACT No. 2978]

AN ACT GRANTING THE FRANCISCAN COLLEGE OF THE IMMACULATE CONCEPCION OF BAYBAY, LEYTE, A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS IN BAYBAY, LEYTE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as Act Numbered Thirty-eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Act Numbered Thirty-nine hundred ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws not inconsistent with this Act, the Franciscan College of the Immaculate Concepcion of Baybay, Leyte, is hereby granted a franchise to construct, maintain and operate for religious, educational, and cultural purposes and in the public interest, radio broadcasting stations in Baybay, Leyte: *Provided,* That this franchise shall be void unless the construction of at least one radio broadcasting station be begun within two years from the date of approval of this Act, and be completed within four years from said date: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the said radio broadcasting stations, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting of obscene or indecent language, speech, act or scene, or for the dissemination of deliberately false information or

willful misrepresentation, or to the detriment of the public health, or to incite, encourage, or assist in subversive or treasonable acts.

SEC. 2. As a condition of the granting of this franchise, the grantee shall execute a bond in favor of the Government of the Philippines in the sum of fifty thousand pesos, in form and with sureties satisfactory to the Secretary of Public Works and Communications, conditioned upon the faithful performance of the grantees' obligations hereunder during the first three years of the life of this franchise. If, after four years from the date of acceptance of this franchise, the grantee shall have fulfilled said obligations, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 3. Acceptance of this franchise shall be given in writing within six months after the approval of this Act. When so accepted by the grantee and upon approval of the bond aforesaid by the Secretary of Public Works and Communications the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 4. The grantee's radio broadcasting stations shall not be put in actual operation until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used under this franchise and issued to the grantee a license for such use.

SEC. 5. In the event of any competing person, natural or juridical, receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of such competing person.

SEC. 6. (*a*) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the franchise, as other persons, natural or juridical, are now or hereafter may be required by law to pay.

(*b*) The grantee shall further be liable to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise.

SEC. 7. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations of the grantee.

SEC. 8. The franchise hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 9. In the event the Government should desire to maintain and operate for itself any or all of the stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein at cost, less reasonable depreciation.

SEC. 10. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public

peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or stations or to authorize the use or possession thereof by any department of the government without compensation to the grantee for the use of said station during the continuance of the national emergency.

SEC. 11. The grantee shall not require any previous censorship of any speech, play, act or scene or other matter to be broadcast from its stations; but if any such speech, play, act or scene or other matters should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matters: *Provided,* That the grantee, during any broadcast, shall cut off from the air the speech, play, act or scene or other matters being broadcast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral, and willful failure to do so shall constitute a valid cause for the cancellation of this franchise.

SEC. 12. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, natural or juridical, nor merge with any other person without the previous approval of the Congress of the Philippines. Any person, natural or juridical, to which this franchise is sold, transferred or assigned, shall be subject to all the conditions, terms, restrictions, and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to such person.

SEC. 13. This franchise shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 14. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4280

[REPUBLIC ACT No. 2979]

AN ACT GRANTING THE COTTAGE TEXTILE DEVELOPMENT CORPORATION A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT, BASED AND PRIVATE COASTAL RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Cottage Textile Development Corporation, its heirs, successors or assigns, a temporary permit to construct, establish, maintain and operate in the Philippines, at such places as the said grantee may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-

to-point, based and private coastal radio stations for the reception and transmission of wireless messages on radio-telegraphy or radio-telephony, each station to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said private fixed point-to-point, based and private coastal radio stations or any of them on lands of the public domain upon such terms as he may prescribe.

SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction of said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 4. The grantee, its heirs, successors or assigns, shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, establish, maintain and operate private fixed point-to-point, based and private coastal radio stations in such places within the Philippines as the interest of its trade and business may justify.

SEC. 5. This temporary permit shall not take effect until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder, but the grantee, its heirs, successors or assigns, may use the international distress frequency of five hundred kilocycles and the high distress frequency of eight thousand two hundred eighty kilocycles whenever necessary.

SEC 6. No fees are chargeable, as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 7. The grantee, its heirs, successors or assigns, shall so construct and operate its radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 8. The grantee, its heirs, successors or assigns, shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radio stations.

SEC. 9. A special right is hereby reserved to the President of the Philippines in time of war, insurrection, public peril, or other national emergency and when public safety requires, to cause the closing of the grantee's radio stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee during the continuance of the national emergency.

SEC. 10. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, firm, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred, or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 11. This temporary permit shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 12. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4294

[REPUBLIC ACT No. 2980]

AN ACT GRANTING RADIO PHILIPPINE NETWORK, INC., A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE RADIO BROADCASTING AND TELEVISION STATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act Numbered Thirty-eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws not inconsistent with this Act, Radio Philippine Network, Inc., is hereby granted a temporary permit to construct, establish, maintain and operate for commercial purposes and in the public interest, radio broadcasting and television stations within the Philippines: *Provided,* That this temporary permit shall be void unless the construction of at least one radio broadcasting or one television station be begun within two years from the date of approval of this Act, and be completed within four years from said date: *Provided, further,* That the grantee shall provide public

service time to enable the Government, through the said radio broadcasting and television stations, to reach the population on important public issues; shall assist in the function of public information and education; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent language, act or scene, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage, or assist in subversive or treasonable acts.

SEC. 2. In the event of any competing person, natural or juridical, receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing person.

SEC. 3. A special right is reserved to the President of the Philippines in time of war, rebellion, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 4. The grantee shall file a bond in the amount of fifty thousand pesos to guarantee the full compliance and fulfillment of the condition, under which this permit is granted.

SEC. 5. The grantee shall not require any previous censorship of any speech, play, act or scene or other matter to be broadcast and/or telecast from its stations; but if any such speech, play, act or scene or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matter: *Provided*, That the grantee, during any broadcast and/or telecast, shall cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral, and willful failure to do so shall constitute a valid cause for the cancellation of this temporary permit.

SEC. 6. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations.

SEC. 7. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit nor the rights and privileges acquired thereunder to any person, natural or juridical, nor merge with any other person without the previous approval of the Congress of the Philippines. Any person, natural or juridical, to which this temporary permit is sold, transferred or assigned shall

be subject to all the conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to such person.

SEC. 8. The temporary permit hereby granted shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 9. The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the temporary permit, as other persons, natural or juridical, are now or hereafter may be required by law to pay.

The grantee shall further be liable to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this temporary permit.

SEC. 10. This temporary permit shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 11. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4310

[REPUBLIC ACT NO. 2981]

AN ACT GRANTING THE GUAGUA ELECTRIC LIGHT PLANT COMPANY, INCORPORATED, A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITIES OF GUAGUA AND SEXMOAN, PROVINCE OF PAMPANGA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Guagua Electric Light Plant Company, Inc., for a period of twenty-five years from the approval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the municipalities of Guagua and Sexmoan, Province of Pampanga.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. It is expressly provided that, in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4315

[REPUBLIC ACT No. 2982]

AN ACT GRANTING THE MUNICIPALITY OF EL NIDO, PROVINCE OF PALAWAN, A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two and to the provisions of the Constitution, there is granted to the Municipality of El Nido, Province of Palawan, for a period of twenty-five years from the approval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat, and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the limits of the said municipality.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. It is expressly provided that, in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein at cost, less reasonable depreciation.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4320

[REPUBLIC ACT No. 2983]

AN ACT GRANTING MR. CONSTANTE IBAVIOSA A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AN ICE PLANT AND COLD STORAGE IN THE CITY OF MANILA AND SUBURBS, AND TO SELL ICE AND TO SUPPLY COLD STORAGE THEREIN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions imposed by this Act, there is hereby granted to Mr. Constante Ibaviosa, hereinafter referred to as the grantee, a franchise to construct, operate and maintain an ice plant and cold storage in the City of Manila and suburbs, for the purpose of manufacturing and distributing ice and supplying cold

storage therein and to charge and collect a schedule of prices and rates for the ice and cold storage so furnished, which schedule of prices and rates shall at all times be subject to regulation by the Public Service Commission or its legal successor.

SEC. 2. The grantee shall manufacture and supply ice up to the limit of the capacity of his plant, said limit to be determined by the Public Service Commission or its legal successor in such certificate of convenience and public necessity as may be issued by it as prescribed by Section four.

SEC. 3. All the apparatus and appurtenances to be used by the grantee shall be modern, safe and first class in every respect, and the grantee shall, whenever the Public Service Commission shall determine that public interest reasonably requires it, change or alter any of his apparatus and appurtenances at grantee's expense.

SEC. 4. This franchise shall continue for a period of fifty years from the date said plant and cold storage shall be placed in operation and/or shall commence the manufacture and distribution of ice in the City of Manila and suburbs, and is made subject to the express condition that the same shall be null and void unless the construction of said plant and cold storage be begun within two years from the date of approval of this Act and completed within four years from said date, except when prevented by an act of God, or *force majeure,* martial law, riot, civil commotion, usurpation of military power or any other cause beyond the grantee's control.

SEC. 5. After grantee's compliance with the requirements of the next preceding section, the Public Service Commission or its legal successor, by proper order or writ, shall authorize the construction of necessary work for the purposes of this franchise within a reasonable time to be determined by the said Commission.

Upon determination by the Public Service Commission or its legal successor after a hearing, upon reasonable written notice to the grantee, that the grantee has violated any of the provisions of this section as to the commencement and/or completion of work authorized by the certificate of convenience and public necessity, the said Commission or its legal successor shall declare the bond or bonds forfeited as liquidated damages and not as penalty to the National Government. The said Commission or its legal successor shall order the return of the deposit as aforestated, together with any interest or dividends thereon received by the Treasurer of the Philippines, to the grantee upon the satisfactory completion of any work authorized by its certificate of convenience and public necessity, in accordance with the terms and conditions of said certificate obtained, and the Treasurer of the Philippines shall return said deposit to the grantee together with said interest and/or dividends immediately upon presentation to him of a certified copy of such order of the Public Service Commission or its legal successor.

SEC. 6. The books, records and accounts of the grantee shall always be open to the inspection of the municipal treasurer or his authorized representatives, and it shall be the duty of the grantee to submit to the municipal treasurer quarterly reports in duplicate, showing the gross

receipts for the quarter past, one of which shall be forwarded by the municipal treasurer to the Auditor General, who shall keep the same on file.

SEC. 7. The grantee, with the approval of the Congress of the Philippines first had, may sell, lease, grant, convey, assign, give in usufruct, or transfer this franchise and all property and rights acquired thereunder to any individual, co-partnership, private, public or quasi-public association, corporation, or joint-stock company competent to operate the business hereby authorized, but transfer of title to the franchise or any right of ownership or interest acquired under such sale, lease, grant, conveyance, assignment, gift in usufruct, or transfer shall not be effective even after such approval shall have been obtained until there shall have been filed in the Office of the Public Service Commission or its legal successor an agreement in writing by which the individual, co-partnership, private, public, or quasi-public association, corporation, or joint-stock company in whose favor such sale, lease, grant, conveyance, assignment, gift in usufruct, or transfer is made, shall be firmly bound to comply with all the terms and conditions imposed upon the grantee by this franchise and by any and all certificates of convenience and public necessity therefor issued by the Public Service Commission or its legal successor, and to accept the same subject to all existing terms and conditions.

SEC. 8. The Public Service Commission or its legal successor shall have the power, after a reasonable written notice to the grantee and a hearing of the interested parties, to declare the forefeiture of this franchise and all rights inherent in the same for failure on the part of the grantee to comply with any of the terms and conditions thereof, unless such failure shall have been directly and primarily caused by an act of God, *force majeure*, usurped rights, uprising or other cause beyond the grantee's control. Against such declaration of forfeiture by the Public Service Commission or its legal successor, the grantee may apply for the remedies provided in Section thirty-four and thirty-six of Commonwealth Act Numbered One hundred forty-six as amended. The remedy provided herein shall not be a bar to any other remedy provided by existing laws for the forfeiture of this franchise.

SEC. 9. This franchise is granted subject to the provisions of Commonwealth Act Numbered One hundred forty-six, as amended, and with the understanding and upon the condition that it shall be subject to amendment, alteration or repeal by the Congress of the Philippines when public interest so requires.

It shall be the duty of the grantee to submit to the City Treasurer a quarterly report in duplicate, showing the gross receipt for the quarter past, one of which shall be forwarded by the City Treasurer to the Auditor General, who shall keep the same on file.

SEC. 10. In the event of any competing individual, association of persons or corporation receiving from the Congress of the Philippines a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become part of the terms hereof and shall operate

equally in favor of the grantee as in the case of said competing individual, association of persons or corporation.

SEC. 11. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4367

[REPUBLIC ACT No. 2984]

AN ACT GRANTING MR. WASHINGTON BRODITH A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A RADIO BROADCASTING STATION IN THE MUNICIPALITY OF GINGOOG, PROVINCE OF MISAMIS ORIENTAL, PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as Act Numbered Three thousand eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act Numbered Three thousand nine hundred ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws, not inconsistent with this Act, Mr. Washington Brodith is hereby granted a franchise to construct, maintain and operate a radio broadcasting station in the Municipality of Gingoog, Province of Misamis Oriental, Philippines.

SEC. 2. This franchise shall continue for a period of twenty-five years from the date the said station shall be put in operation, and is granted upon the express condition that the same shall be void unless the construction of said station be begun within six months from the date of approval of this Act and be completed within two years from said date.

SEC. 3. This franchise is likewise made upon the express condition that the grantee shall contribute to the public welfare, shall assist in the functions of public information and education, shall conform to the ethics of honest enterprise and shall not use his station for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 4. The grantee's radio broadcasting station shall not be put in actual operation until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used under this franchise and issued to the grantee a license for such use.

SEC. 5. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or to authorize the use or possession thereof by any department of the Government without compensation to the grantee

for the use of said station during the continuance of the national emergency.

SEC. 6. The grantee shall be liable to pay the same taxes, unless exempted therefrom, on his real estate, buildings, and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

The grantee shall further be liable to pay all other taxes under the National Internal Revenue Code by reason of this franchise.

SEC. 7. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of his station.

SEC. 8. The franchise hereby granted shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 9. As a condition to the granting of this franchise, the grantee shall execute a bond in favor of the Government of the Philippines in the sum of fifty thousand pesos, in form and with sureties satisfactory to the Secretary of Public Works and Communications, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after three years from the date of acceptance of this franchise, the grantee shall have fulfilled said obligations, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 10. Acceptance of this franchise shall be given in writing within six months after approval of this Act. When so accepted by the grantee and upon the approval of the bond aforesaid by the Secretary of Public Works and Communications the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 11. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to said person, firm, company, corporation or other commercial or legal entity.

SEC. 12. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from his station; but if any such speech, play or other matter should constitute a violation of the law

or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee, during any broadcast, shall cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral, and willful failure to do so shall constitute a valid cause for the cancellation of this franchise.

SEC. 13. This franchise shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 14. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4412

[REPUBLIC ACT NO. 2985]

AN ACT GRANTING THE MANILA CHRONICLE A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT AND LAND BASED AND LAND MOBILE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Manila Chronicle, its successors or assigns, a temporary permit to construct, maintain and operate in the Philippines, at Manila and at such places as the said company may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point and land based and land mobile radio stations for the reception and transmission of wireless messages on radiotelegraphy or radiotelephony, each station to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction or installation of said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 3. The grantee, its successors or assigns, shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, install, maintain, and operate private fixed point-to-point and land based and land mobile radio stations at such places within the Philippines as the interest of the grantee may justify.

SEC. 4. No fees shall be charged by the grantee as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 5. The grantee, its successors or assigns, shall so construct and operate its radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 6. The grantee, its successors or assigns, shall hold the national, provincial, city and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radio stations.

SEC. 7. The grantee, its successors or assigns, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted.

SEC. 8. The grantee, its successors or assigns, is authorized to operate its private fixed point-to-point and land based and land mobile radio stations in the medium frequency, high frequency, and very high frequency that may be assigned to it by the Secretary of Public Works and Communications.

SEC. 9. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred, or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 10. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 11. This temporary permit shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 12. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4435

[REPUBLIC ACT No. 2986]

AN ACT GRANTING THE BOLINAO ELECTRONICS CORPORATION A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT AND LAND BASED AND LAND MOBILE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Bolinao Electronics Corporation, its successors or assigns, a temporary permit to construct, maintain and operate in the Philippines, and at such places as the said company may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point and land based and land mobile radio stations for the reception and transmission of wireless messages on radiotelegraphy or radiotelephony, each station to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction or installation of said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 3. The grantee, its successors or assigns, shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, install, maintain, and operate private fixed point-to-point and land based and land mobile radio stations at such places within the Philippines as the interest of the grantee may justify.

SEC. 4. No fees shall be charged by the grantee as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 5. The grantee, its successors or assigns, shall so construct and operate its radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 6. The grantee, its successors or assigns, shall hold the national, provincial, city and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radio stations.

SEC. 7. The grantee, its successors or assigns, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted.

SEC. 8. The grantee, its successors or assigns, is authorized to operate its private fixed point-to-point and land based and land mobile radio stations in the medium frequency, high frequency, and very high frequency that may be assigned to it by the Secretary of Public Works and Communications.

SEC. 9. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 10. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of said station during the continuance of the national emergency.

SEC. 11. This temporary permit shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privilege herein provided for.

SEC. 12. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4445

[REPUBLIC ACT No. 2987]

AN ACT AUTHORIZING AND APPROVING THE TRANSFER OF THE TEMPORARY PERMIT GRANTED TO MR. A. J. WILLS BY REPUBLIC ACT NUMBERED SEVEN HUNDRED SIXTY-SEVEN, AS AMENDED, IN FAVOR OF THE BLUE NETWORK, INCORPORATED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The transfer of the temporary permit granted to Mr. A. J. Wills by Republic Act Numbered Seven hundred sixty-seven, as amended, in favor of the Blue Network, Inc., together with all the rights and privileges

of, including any channel and/or frequency assignments and permits that may have been granted to, the former is hereby authorized and approved: *Provided,* That the transferee complies with all the requirements and conditions under which the temporary permit was granted to Mr. A. J. Wills by Republic Act Numbered Seven hundred sixty-seven, otherwise this transfer shall be void.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4463

[REPUBLIC ACT NO. 2988]

AN ACT GRANTING BERNARDO GIMENEZ SILVERIO A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF OCAMPO, PROVINCE OF CAMARINES SUR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Bernardo Gimenez Silverio, for a period of fifty years from the approval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the Municipality of Ocampo, Province of Camarines Sur.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. It is expressly provided that, in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender his franchise and will turn over to the Government all serviceable equipment therein at cost, less reasonable depreciation.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4476

[REPUBLIC ACT NO. 2989]

AN ACT GRANTING THE NBC BROADCASTING CO., A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING AND TELEVISION STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, the NBC Broadcasting Company is hereby granted a fran-

chise, which shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting and television stations in the Philippines: *Provided,* That this franchise shall be void unless the construction of at least one radio broadcasting or television station be begun within two years from the date of approval of this Act, and be completed within four years from said date: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the said radio broadcasting and television stations, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 2. Such provisions of Act Numbered Thirty-eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Act Numbered Thirty-nine hundred and ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred and forty-six, known as the Public Service Act, and their amendments, as are applicable to radio broadcasting and television stations shall be applied, as far as practicable, to the radio broadcasting and television stations referred to in Section one.

SEC. 3. In the event of any competing individual, partnership or corporation receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership, or corporation.

SEC. 4. (*a*) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, as other persons or corporations are now or hereafter may be required by law to pay.

(*b*) The grantee shall further be liable to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise.

SEC. 5. The grantee shall file a bond of fifty thousand pesos to guarantee the faithful compliance of the conditions of this franchise.

SEC. 6. The grantee shall not sell, convey or otherwise transfer to any person, corporation, association or partnership this franchise without the previous approval of Congress.

SEC. 7. In the event the Government should desire to maintain and operate for itself any or all of the stations herein authorized, the grantee shall turn over such sta-

tion or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 8. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4507

[REPUBLIC ACT NO. 2990]

AN ACT GRANTING THE FILIPINAS BROADCASTING NETWORK, INCORPORATED, A FRANCHISE TO ESTABLISH RADIO STATIONS FOR DOMESTIC TELECOMMUNICATIONS, BROADCASTING AND TELECASTING.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution and the provisions, not inconsistent herewith, of Act Numbered Three hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws, there is hereby granted to Filipinas Broadcasting Network, Incorporated, its successors or assigns, and hereunder referred to as the "grantee," the right and privilege of constructing, installing, establishing and operating in the Philippines, at such places as the Filipinas Broadcasting Network, Incorporated, may select and the Secretary of Public Works and Communications may approve, radio stations for broadcasting, and telecasting and for the reception and transmission of messages on radio stations in the domestic public fixed point-to-point and public base, aeronautical and land mobile stations, including coastal marine service with the corresponding relay stations for the reception and transmission of wireless messages on radiotelegraphy and/or radiotelephony, radioteletype, radiophoto, facsimile, and such other types of emissions or both with vessels at sea and aircraft in the air, without or within the Philippines.

SEC. 2. A special right is hereby reserved to the President of the Philippines in time of war, insurrection, public peril, or other national emergency and when public safety requires, to cause the closing of the grantee's radio station or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of said station during the continuance of the national emergency.

SEC. 3. The President of the Philippines shall have the power and authority to permit the construction of said stations or any of them on any land of the public domain upon such terms and conditions as he may prescribe.

SEC. 4. This franchise shall continue for a period of fifty years from the date the first of said stations shall be placed in operation, and is granted upon the express condition that same shall be void unless the construction of said station be begun within two years from the date of the approval of this Act and be completed within four years from said date.

SEC. 5. The grantee shall file a bond in the amount of fifty thousand pesos to guarantee the full compliance and fulfillment of the conditions under which this franchise is granted. If after four years from the date of the approval of this Act, the grantee shall have fulfilled said conditions, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Government.

SEC. 6. (*a*) This franchise shall not take effect nor shall any power thereunder be exercised by the grantee until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths and channels to be used thereunder and determined the stations to and from which each frequency and wave length may be used, and issued to the grantee a license for such use. The Secretary of Public Works and Communications in alloting to the grantee the frequencies and wave lengths and channels referred to above, shall give due regard to the government's program of expanding its radio telecommunications. (*b*) The Secretary of Public Works and Communications, on reasonable notice to the grantee, may at any time change, or cancel, or modify, in whole or in part, any or all of the allotments of frequencies or wave lengths to be used. He may take such action: (1) whenever in his judgment such frequencies and wave lengths have been used, or there is danger that they will be used by the grantee to impair electrical communications, or stifle competition, or to obtain a monopoly in electrical communications or to secure unreasonable rates for such communication, or to violate otherwise the laws or public policy of the Philippine Republic; (2) whenever in his judgment the public interests of the Republic of the Philippines require that such frequencies or wave lengths should be used for other purposes than those of the grantee, either by the Government of the Philippines or by other individuals or corporations licensed by it; and (3) whenever in his judgment, for any reason, the public interests of the Philippines so require.

SEC. 7. The stations of the grantee shall be so constructed and operated and the wave lengths so selected as to avoid interference with existing stations and to permit the expansion of the grantee's services.

SEC. 8. The grantee shall hold the national, provincial, and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations of the grantee.

SEC. 9. No private property shall be taken for any purpose by the grantee without proper condemnation proceedings and just compensation paid or tendered therefor, and any authority to take and occupy land contained herein shall not apply to the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which this franchise is granted.

SEC. 10. The grantee shall keep an account of the gross receipts of its business and shall furnish the Auditor General and the Treasurer of the Philippines with a copy of such account not later than the thirty-first day of January

of each year for the preceding year. All the books and accounts of the grantee pertaining to its business shall be subject to the official inspection of the Auditor General or his authorized representatives, and the audit and approval of such accounts shall be final and conclusive evidence as to the amount of said gross receipts, except that the grantee shall have the right to appeal to the courts under the terms and conditions provided in the laws of the Philippines.

SEC. 11. The grantee, its successors or assigns, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted.

SEC. 12. In the event of any competing individual, partnership or corporation receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 13. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise, nor the rights or privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity nor merge with any other person, firm, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation, or other commercial or legal entity to which this franchise is sold, transferred, or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 14. (*a*) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay. (*b*) The grantee shall further pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from the business transacted under this franchise by the said grantee.

SEC. 15. This franchise shall not be interpreted to mean as an exclusive grant of the privileges herein provided for.

SEC. 16. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

DECISIONS OF THE SUPREME COURT

[No. L-12845. February 25, 1960]

ZAMBALES CHROMITE MINING CO., plaintiff and appellant, *vs.* JOSE ROBLES, et al., defendants and appellees.

1. ACTION; PENDENCY OF ACTION; WHEN IT IS A BAR TO ANOTHER.—The test by which to determine whether or not the pendency of another action is a bar to a second action is whether or not "the judgment to be rendered in the action first instituted will be such that, regardless of which party is successful, it will amount to *res adjudicata* against the second action." (Hongkong & Shanghai Banking Corporation *vs.* Aldecoa & Co., 30 Phil. 255.)
2. ID.; ID.; ID.; WHEN ACTION FOR EJECTMENT IS NOT A BAR TO AN ACTION IN THE COURT OF FIRST INSTANCE.—The action for ejectment in the Justice of the Peace Court may not bar plaintiff's suit in the Court of First Instance praying, among other things, that defendant be restrained from operating the mining properties without necessarily ejecting him therefrom, because if it is finally decided that defendant should be ejected from the mining premises in the illegal detainer case, plaintiff could still prosecute his causes of action against defendant in the Court of First Instance.
3. ID.; ID.; UNLAWFUL DETAINER; WHY ABANDONMENT OR DISMISSAL OF CASE WILL NOT AFFECT PLAINTIFF'S RIGHTS.—The abandonment or dismissal of the unlawful detainer case will not substantially affect the rights of the plaintiff over the property in litigation, particularly, possession thereof, for the reason that such possession may well be included in the relief prayed for in the Court of First Instance under the prayer at the end of the complaint that "plaintiff further respectfully prays the Honorable Court to such other relief as to it may seem just and equitable under the premises."

APPEAL from an order of the Court of First Instance of Zambales. Lacson, *J.*

The facts are stated in the opinion of the Court.

José P. Bengzon, Guido Advíncula and *Potenciano Villegas, Jr.* for the plaintiff and appellant.

Hermenegildo Atienza for the defendants and appellees,

MONTEMAYOR, *J.:*

This is an appeal by plaintiff Zambales Chromite Mining Co. from the order of the Court of First Instance of Zambales, dated April 23, 1957, dismissing plaintiff's first, third, fourth and fifth causes of action, and from the order of July 23, 1957, denying plaintiff's motion for reconsideration.

On March 17, 1953, Jose Robles, later referred to as the operator, and the Zambales Chromite Mining Co., later mentioned as the mining company, executed a contract later supplemented by a "supplementary agreement", rati-

fied on August 14, 1953. According to these two documents, the mining company which owned or had possession of several mineral claims containing mineral deposits, principally chrome ore, delivered them to Robles who undertook to operate them, extract chrome ore in a minimum amount of 2,000 tons a month and to pay the company a royalty of ₱3.00 per ton net. The other terms of the agreements were that Robles was to repair and rehabilitate at his own expense within a certain period, the roads and bridges of the mining camp and points of mining operations to the provincial road in Sta. Cruz, Zambales, for the purpose of transporting the chrome ore to the Acoje pier or to shipping points of Sta. Cruz, Zambales, and to spend for said repair and rehabilitation at least ₱30,000; that as operator, Robles guaranteed the prompt payment of the wages and salaries, at the minimum wage rate, of all laborers and employees; that any violation of any of the terms and conditions of the agreements was sufficient ground for the cancellation of the same by the aggrieved party; and that at the termination or cancellation of the agreements, all improvements placed on or undertaken by the operator at his expense on the premises, such as, buildings, development work, roads, bridges and the like, which are not movable machinery or equipment, shall become the property of the mining company, without obligation to pay for the same.

Appellant claiming that Robles had violated the terms and conditions of the agreement and that notwithstanding demands made by it on him to comply therewith, he refused to do so, advised him in writing on October 10, 1956 that it had cancelled and resolved the contract and demanded that he vacate the mining properties. On November 28, 1956, it filed an action for unlawful detainer against him in the Justice of the Peace Court of Sta. Cruz Zambales. Robles moved for dismissal of the case on the ground that the Justice of the Peace Court had no jurisdiction over the same, involving as it did mineral land. His motion was denied by the Justice of the Peace Court as well as the Court of First Instance of Zambales before which he raised the question of jurisdiction. Not satisfied, Robles brought the case to this Tribunal in a petition for certiorari (Robles *vs.* Zambales Chromite, G. R. No. L–12560). In our decision promulgated on September 30, 1958, we ruled that the Justice of the Peace Court had jurisdiction to take cognizance of the unlawful detainer case, although it involved mineral land.

In the meantime, on January 7, 1957, plaintiff-appellant filed the present action. Its complaint contained six causes of action. Under the first cause of action, plaintiff claims that defendant Robles failed to extract at

least 2,000 tons of chrome ore a month, beginning August 15, 1953, he having produced only the total of about 3,158 tons of chrome ore, instead of a total of 76,000 tons up to October 15, 1956; that defendant failed to pay plaintiff at least the sum of ₱12,000 per month beginning August 15, 1953, or the total sum of ₱456,000 from August 15, 1953, computed at 12% of the total value of said 76,000 tons computed at the selling price of ₱48.00 per ton, defendant having paid the plaintiff as of October 11, 1956, only the total sum of ₱3,426.25; that defendant Robles did not spend at least ₱30,000, Philippine currency, as agreed upon for the rehabilitation and repair of plaintiff's roads and bridges; that he also failed to promptly pay the wages and salaries of his laborers and employees working at the said mines, causing many of said laborers to quit their jobs, thereby contributing largely to defendant's failure to comply with the other terms of the agreements; and that despite the cancellation and dissolution of the contract by plaintiff, defendant continued to operate the mining mineral claims and had removed a total of at least 1,258.22 tons of chrome ore between October 11 and 31, 1956, of which 858.22 tons defendant shipped on board a steamer and sold at a total price of ₱43,280.44, and the remaining 400 tons were deposited by him along the bank of the Nayum River in Sta. Cruz, Zambales, preparatory to their being shipped out and removed from the municipality of Sta. Cruz, Zambales. For the protection of the rights and interest of the plaintiff, it later asked the court to perpetually restrain Robles and his codefendants from further mining, extracting and removing chrome ore from the aforementioned mineral claims.

Under the second cause of action, plaintiff alleges that contrary to the stipulations of the contracts, plaintiff had been reliably informed that Robles and his codefendants, representatives and employees, were contemplating or threatening to remove and destroy or tear down the buildings, roads, and bridges and other permanent improvements and installations belonging to the plaintiff and within its mining properties. Plaintiff asked that defendants be restrained from removing and destroying or tearing down said improvements.

Under the third cause of action, plaintiff alleges that although under the conditions of the contract, plaintiff had the right to send and station its representatives at the mines to verify the status of the same and to take the necessary precautions to protect its properties, Domingo Sison and Juan Francisco acting for themselves and/or representatives of defendant Robles, with the aid of the Philippine Constabulary, ejected the representatives sent by the plaintiff on or about January 2, 1957; that inas-

much as Robles had lost any right to occupy the mineral claims and extract chrome ore therefrom because of the cancellation of the contract, he had no right to prevent plaintiff or its authorized representatives from entering the mines and from using its buildings, roads and bridges and other permanent improvements; consequently, defendant should be restrained from preventing plaintiff or any of its representatives from entering the mining premises and using the buildings, roads, bridges, etc.

Under the fourth cause of action, plaintiff asks that defendants be required jointly and severally to pay the sum of ₱43,280.44, which represents the value of 858.22 tons of chrome ore referred to in the first cause of action.

Under the fifth cause of action, plaintiff claims delivery by or payment from defendants of the balance of 400 tons of chrome ore removed from the mines after the cancellation of the contract and deposited along the bank of the Nayum River, mentioned in the first cause of action.

Under the sixth cause of action, plaintiff claims the sum of ₱10,000 attorney's fees plus expenses of litigation.

Robles filed his answer to the complaint with a motion to dismiss the first, fourth and fifth causes of action and that after trial on the merits, the second, third and sixth causes of action be likewise dismissed.

On April 23, 1957, the trial court dismissed plaintiff's first, third, fourth and fifth causes of action and at the same time ordered that the second and sixth causes of action be set for hearing. For purposes of reference, we reproduce said order:

"Acting on the defendant's petition to dismiss plaintiff's instant complaint and it appearing that there is pending before the Justice of the Peace Court of Sta. Cruz, Zambales, Civil Case No. 127 entitled 'Zambales Chromite Mining Co. *vs.* Jose Robles', for ejectment; that this Court has found in Civil Case No. 1878 of this court, which is a certiorari case filed by Jose Robles against the Justice of the Peace of Sta. Cruz, Zambales, in connection with said Case No. 127, that said Justice of the Peace has jurisdiction to try said Civil Case No. 127; that between said Case No. 127 and the instant case there is identity of parties and rights asserted, as well as substantial identity in the relief prayed for, so that any judgment which may be rendered in said Case No. 127 will undoubtedly amount to res adjudicata with respect to plaintiff's First, Third, Fourth and Fifth causes of action in this case; that the proper remedy for these causes of action is an action for recovery of possession and rents; that it has been held that an injunction should not be a substitute for an ordinary action of forcible entry and detainer (Sofia Devesa *vs.* Crispin Arbes, 13 Phil. pp. 273, 277), the Court finds the dismissal of plaintiff's first, third, fourth and fifth causes of action to be in order.

"PREMISES CONSIDERED, the plaintiff's first, third, fourth and fifth causes of action in this case, are hereby dismissed, and the case is set for hearing on June 12, 1957 at 9:00 o'clock in the morning with respect to plaintiff's Second and Sixth causes of action." (Record pp. 84–85).

In asking for the dismissal of the first cause of action, Robles claimed that there was another action pending between the same parties and for the same causes before the Justice of the Peace Court of Sta. Cruz, Zambales, Case No. 127, referring to the illegal detainer case already mentioned. In answer, plaintiff contends that the pendency of another action may not be invoked in the instant case because although the basis of the complaint for ejectment and the present action arose from the same cause, namely, violation by the defendant of the terms and conditions of the contract, nevertheless, the relief prayed for and the rights asserted are different. In the ejectment case, plaintiff seeks to obtain possession of the mining premises, while in the present action, in its first cause of action, plaintiff merely asks that defendant be restrained from operating the mining properties without necessarily being ejected therefrom. Moreover, other causes of action set forth in plaintiff's complaint, such as the recovery of ₱43,280.44 (fourth cause of action) and the recovery of 400 tons of chrome ore or its value (fifth cause of action) are well beyond the jurisdiction of the Justice of the Peace Court, and what is more, the same do not represent back rentals or damages on account of the unlawful detainer.

Defendant, however, asserts that the first cause of action is in the guise of a separate action of injunction and is in effect a petition for preliminary injunction in aid of its action for illegal detainer, a remedy which the Justice of the Peace Court may not grant; naturally, plaintiff may not obtain such relief by filing a separate action for injunction in the Court of First Instance based on the same set of facts. As to the distinction sought to be made by plaintiff between the right to possess the mining properties and the right to operate them, such distinction according to defendant is untenable for the reason that both rights are co-existent on the question of whether the contract between the parties still exists. And as regards the fourth and fifth causes of action, defendant urges that on action for injunction is not the proper remedy, but rather the filing of an ordinary action for the recovery of a sum of money and for replevin, respectively.

The test by which to determine whether or not the pendency of another action is a bar to a second action, is whether or not "the judgment to be rendered in the action first instituted will be such that, regardless of which party is successful, it will amount to res adjudicata against the second action." (Hongkong & Shanghai Banking Corporation *vs.* Aldecoa & Co., 30 Phil. 255). In said case, it was held that to sustain the plea of another action—

"* * * there must be the same parties, or at least such as represent the same interests. There must be the same rights asserted

and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity of these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the parties."

In that case, it was held that an action to annul the mortgage was not a bar to an action for foreclosure of the same, for the reason that although a final judgment in the first case declaring the mortgage null and void, would preclude the bank from foreclosing the mortgage, and therefore dismiss its foreclosure suit, still a decision holding such mortgage valid would pave the way for the foreclosure of the same. So, in the present case, the action for ejectment in the Justice of the Peace Court may not bar plaintiff's suit in the Court of First Instance, or rather some of his causes of action because if it is finally decided that defendant should be ejected from the mining premises in the illegal detainer case, plaintiff could still prosecute his causes of action against defendant in the Court of First Instance. It is argued that injunction should not be a substitute for an ordinary action for forcible entry and detainer (Sofia Devesa vs. Crispin Arbes, 13 Phil. 277, cited in the appealed order). However, in the four causes of action dismissed by the trial court, plaintiff does not seek to deprive defendant of the possession of the property. In the first cause of action, plaintiff merely asks that defendant be restrained from further operating the mines or otherwise extracting ore from the same; in the third cause of action, the relief sought was to restrain defendant from preventing plaintiff's representatives from entering the premises, and from using the buildings, roads, bridges, etc. on the premises. The fourth and fifth causes of action only ask for the recovery of sums of money or the possession of chrome ore, other than damages due to illegal detainer. Incidentally, it will be observed that although defendant Robles in his answer did not ask for the dismissal of the third cause of action, nevertheless, the trial court *motu proprio* dismissed the same.

There is another and practical reason for holding that the unlawful detainer case in the Justice of the Peace Court of Sta. Cruz, Zambales, does not bar the causes of action of plaintiff company in the Court of First Instance, dismissed by the latter, and it is this. Said unlawful detainer case may for all practical purposes now be considered abandoned, and if it has not yet been tried and decided by the Justice of the Peace Court, plaintiff company may well ask for its dismissal.

It is highly possible that plaintiff company, seeing that the final determination of the unlawful detainer case would

be unduly delayed, as in fact it was, and consequently, it could not obtain the possession of the property in question in the immediate future, it filed the present case in the Court of First Instance in 1957, in order to obtain appropriate relief and minimize damages and losses. But then it could not well ask for the dismissal of said unlawful detainer case, for the reason that the Justice of the Peace Court had temporarily lost jurisdiction over the same, the case having been finally taken to this Tribunal on appeal, and said appeal was not decided by us until September 30, 1958.

The abandonment or dismissal of the unlawful detainer case would not substantially affect the rights of the mining company over the property in litigation, particularly, possession thereof, for the reason that such possession may well be included in the relief prayed for in the Court of First Instance under the prayer at the end of its complaint that "plaintiff further respectfully prays the Honorable Court to *such other relief* as to it may seem just and equitable under the premises". Besides, the Court of First Instance in the present action would be in a much better position to determine the relative rights of the parties over the property in question, and from the standpoint of the plaintiff company, grant it all the relief it is entitled to. Ordinarily, the relief that a plaintiff in an unlawful detainer case is entitled to is the possession of the property under litigation, and damages in the form of accrued rentals or the reasonable value of the use and occupation of the premises. In the present case, however, the rentals and property were to be in the form of royalties based on the production of chrome ore as a result of the operation of the mineral claims by the defendant. However, there looms an incompatibility, namely, that in order to pay said royalties, the defendant must operate the mines and produce chrome ore, but according to the relief prayed for by plaintiff's complaint, it does not want defendant to continue operating the mines. Besides, there are other reliefs demanded by plaintiff company which are not available in an unlawful detainer case, such as, the payment of royalties, preventing defendant from removing, burning, or otherwise destroying any of the buildings, roads, bridges and other permanent improvement and installations on the premises; preventing defendant from impeding plaintiff's representatives from entering and staying on the properties as agreed upon in the contract; the payment by defendant to the plaintiff of about ₱43,000 for chrome ore said to have been sold by him, and for the delivery of chrome ore deposited by defendant along the bank of the river, preparatory to the shipment thereof abroad, or value of said ore.

IN VIEW OF THE FOREGOING, the order appealed from is set aside and the case is ordered remanded to the trial court for further proceedings, with costs.

Parás, C. J., Bengzon, Bautista Angelo, Reyes, J. B. L., Endencia, Barrera, and *Gutiérrez David, JJ.,* concur.

Labrador, and *Concepción, JJ.,* in the result.

Order set aside.

[No. L-13161. February 25, 1960]

NATIONAL WATERWORKS AND SEWERAGE AUTHORIRY, petitioner, *vs.* COURT OF INDUSTRIAL RELATIONS, ET AL., respondents.

COURT OF INDUSTRIAL RELATIONS; AWARDS; WHY NOTICE IS REQUIRED BEFORE THEY CAN BE TERMINATED.—Since an award by the Court of Industrial Relations is made as a result of a controversy and is binding upon the parties, its effectivity cannot be terminated *ex parte* unless the period of its duration is specified therein. The reason is obvious: since the award is made in favor of the employee, it is but fair and just that he be heard before his right thereto is terminated, otherwise the employer might act arbitrarily or to his prejudice. That is why section 17 of Commonwealth Act No. 103 requires that notice of termination be given to the court. This requirement is not merely *pro forma*. This is to give the court the right to intervene in order that the interest of labor may not be jeopardized.

ORIGINAL ACTION in the Supreme Court. Certiorari with Preliminary Injunction.

The facts are stated in the opinion of the Court.

First Assistant Government Corporate Counsel Simeón M. Gopengco and *Attorney Romualdo Valera* for the petitioner.

Carlos E. Santiago for the respondent Union and César Cabrera et al.

BAUTISTA ANGELO, *J.*:

On February 14, 1957, Cesar Cabrera and seventy-one (71) other employees of the former Metropolitan Water District, filed with the Court of Industrial Relations a motion praying for the execution of an award contained in a resolution issued by said court on November 25, 1950 in Case No. 359-V granting an increase of ₱0.50 per day to all employees of the Metropolitan Water District and alleging that pursuant to said award the Metropolitan Water District paid to said employees the salary increase granted therein, but that in November, 1953 the Metropolitan Water District stopped paying the salary increase for which reason they prayed that an order be issued directing the said district to pay them the salary increase from the time that it was stopped designating an examiner of the court to make a computation of the amounts to which they are entitled.

On March 11, 1957, the National Waterworks and Sewerage Authority (NAWASA), which succeeded the Metropolitan Water District, filed an opposition to the motion contending that there is no award to be executed because the same has already been terminated pursuant to the provisions of Section 17 of Commonwealth Act No. 103, as amended. The NAWASA alleged that, the award made by the Court of Industrial Relations on November 25, 1950 not having specified the time during which it should be valid and effective, it gave notice of its termination on December

29, 1953 to said court in Case No. 359-V furnishing a copy thereof to the union with which the movants were affiliated.

On July 19, 1957, the Court of Industrial Relations issued an order stating that the award contained in its resolution of November 25, 1950 could not have been terminated by merely serving a notice of termination on the part of the NAWASA even if the same does not specify the time during which it shall be effective because the approval of the court was still necessary for its validity, and since no approval has been obtained, the award is still valid and effective. Wherefore, the court directed its examiner to compute the amounts to which the movants were entitled by way of salary increase . The NAWASA filed a motion for reconsideration, and when the same was denied, it interposed the present petition for review.

The background which gave rise to the incident subject of the present petition for review may be stated as follows: The Metropolitan Water District Workers' Union filed with the predecessor of the NAWASA (Metropolitan Water District) a set of demands one of which was the reallocation and arrangement of the salaries and wages of its employees and laborers in accordance with the standarddized plan prepared by the union. The parties tried to reach an amicable settlement but failed, whereupon the members of the union went on strike on October 18, 1949. Without delay, the Court of Industrial Relations intervened summoning the representatives of both employer and employees to a conference during which it was agreed to grant a general increase of ₱0.50 a day effective October 21, 1949 to all laborers on the daily basis and to those employees who are on the monthly basis but are on strike. This agreement was reduced to writing and was approved on October 20, 1949. It was expressly stated therein that the agreement was temporary in nature and would only remain in force until the court fixes the reasonable and just compensation to which the strikers were entitled. Immediately after the execution of said agreement, the court proceeded to receive evidence on the strength of which it handed down an order on June 13, 1950 adopting a new scale for wages. Neither of the parties was satisfied and both moved for a reconsideration. The results was the order issued on November 25, 1950, which amends the previous order in a manner more favorable and acceptable to the employees.

It would therefore appear that the award contained in the order of November 25, 1950 which grants to the employees of the NAWASA the salary increase of ₱0.50 a day was not the result of a compromise arrived at between the parties but rather it was fixed by the Court of Industrial Relations as the reasonable increase to which the employees and laborers were entitled after a mature study and consideration of the evidence submitted by the parties at the

hearing set by the court for the purpose. The question that now arises is; Can the NAWASA terminate the effectivity of the award by simply giving notice thereof to the court and to the union under Section 17 of Commonwealth Act No. 103?

Said Section 17 provides:

"An award, order or decision of the Court shall be valid and effective during the time therein specified. In the absence of such specification, any party or parties to a controversy may terminate the effectiveness of an award, order or decision after three years have elapsed from the date of said award, order or decision by giving notice to that effect to the Court."

Since the award did not specify the time during which it shall be valid and effective, considering that it was not the result of a compromise arrived at between the parties, it is the theory of petitioner that it can terminate the same by giving notice to the court after the lapse of three years from the date of the award. Here this period has already elapsed, and so petitioner contends that the notice given by it of its termination was in accordance with law. The Court of Industrial Relations disagrees with this theory, for it is of the opinion that before said notice of termination could have any validity, it first needs the sanction of the court. On this point, it made the following comment: "The Court maintains the policy that Section 17 of Commonwealth Act No. 103, as amended, could not be mechanically invoked nor availed of by the party by refusing to comply with such award through the sending of a notice of termination. In the interest of justice and equity, the Court maintains the policy that all cases of termination of award, order, or decision, it must be properly heard in order that the laborers or the parties could not be deprived arbitrarily of their lawful earning."

The foregoing interpretation of the law is correct. Since an award is made as a result of a controversy and is binding upon both parties, it would appear logical that its effectivity cannot be terminated *ex parte* unless the period of its duration is specified therein. The reason is obvious: since the award is made in favor of the employee, it is but fair and just that he be heard before his right thereto is terminated, otherwise the employer might act arbitrarily or to his prejudice. That is why the law requires that notice of termination be given to the court. This requirement is not merely *pro forma*. This is to give the court the right to intervene in order that the interest of labor may not be jeopardized.

WHEREFORE, petition is dismissed, without pronouncement as to costs.

Parás, C. J., Labrador, Concepción, Reyes, J. B. L., Endencia, Barrera, Gutiérrez David, JJ., concur.

Petition dismissed.

[No. L-11756. January 30, 1960]

JOSE B. GAMBOA AND ELISA O. GAMBOA, petitioners and appellants, *vs.* MA-AO SUGAR CENTRAL COMPANY, INC., respondent and appellee.

SUGAR QUOTAS; SUGAR ALLOTMENTS, NATURE OF; SHORTAGE IN PRODUCTION; DISPOSITION; JOINT ACTION OF CENTRAL AND PLANTER REQUIRED.—Original sugar allotments are indivisible, and may be disposed of only by joint action of the sugar central and the planter. The shortage in the production of an hacienda in one milling district cannot, therefore, be filled up from another district owned by the same hacienda owner against the express objection of the first milling district.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. De la Cruz, *J.*

The facts are stated in the opinion of the Court.

José B. Gamboa for the petitioners and appellants.
Hilado & Hilado for the respondent and appellee.

LABRADOR, *J.:*

On July 13, 1954 petitioners herein filed an action in the Court of First Instance of Negros Occidental to compel the respondent Ma-ao Sugar Central Co., Inc. to issue a certificate of shortage in the production quotas of the haciendas "Elga" and "Oselisa" for the crop year 1953–1954 and to declare that they have the right, as assignees of their lessees, to cover such production quota deficiencies with their own sugar produced from another mill district, or to order respondent to pay petitioners the sum of ₱16,627.89 as damage for its refusal to do so. In the second cause of action alleged in their complaint petitioners also demanded issuance of a warehouse receipt for A–136.56 piculs, which represents unpaid rentals of petitioners' hacienda "Elga," respondent retaining for itself the said amount of sugar for its own benefit, and in case respondent fails to do so, to pay petitioners ₱2,096.19 as damages.

In the course of the proceedings in the court below, petitioners herein abandoned the second cause of action. After trial, the court below, Hon. Jose S. de la Cruz, presiding, held that the right to both the export and domestic and reserve sugar belongs to the planter only, or plantation owner who cultivated the plantation, and an owner-lessor who ceases to produce sugar on the plantation himself, loses the right to fill the quotas, such that petitioners herein, who did not produce and deliver sugar cane to the mill, have no right to the quota; that deficiencies in the production quota can be covered from another mill district only if there is shortage in the same mill district, the quota being transferable only upon a joint action of both the planter and the central. For

the above reasons the court dismissed the action. Hence this appeal.

The record discloses that petitioners are the owners of the two haciendas "Elga" and "Oselisa", both affiliated with the respondent sugar central. During the crop years 1952–1953 and 1953–1954 petitioners leased the hacienda "Elga" to their son Herman Gamboa and the hacienda "Oselisa" to their daughter Fay Gamboa and her husband Edmond Weber. In the crop year 1952–1953 the lessees of both haciendas failed to produce the quotas for both and so the lessees assigned their rights to their quotas to their father, petitioner Jose B. Gamboa, and the latter filled the shortages in the quotas from another mill district, the Talisay-Silay Milling District. For the crop year 1953–1954 the lessees again were short in their production, so they again assigned their rights to their quotas to their father, petitioner herein Jose B. Gamboa (Exhibit C). But in the crop year 1953–1954 the respondent alleged and the court found that there was enough sugar produced from the mill district to supply the deficiency in the production of the quotas of the two haciendas in question.

The filing of shortages occuring in a mill district is governed by Sec. 8 (*a*) of Act No. 4166, which has been added to the latter by Republic Act No. 1072, which provides:

> "If after the termination of milling in each sugar central in any milling season, the holder of any allotment is not able to mill enough sugar to fill his allotment for that year, that amount of such allotment which he cannot fill during such milling season shall be reallocated by the Sugar Quota Administration to other holders of allotments first within the same district, and then to other districts or in such other manner as may insure the filling of the quota for that year: *Provided,* That no reallocation under the provision of this section shall diminish the allotment to which the holder may be entitled in any subsequent crop year."

Under the above-quoted express provision of the law, it is evident that the shortages in the production of the two haciendas must first be filled from the respondent Ma-ao Sugar Central Milling District. Petitioners argue that in the crop year 1952–1953, the shortages in filling up their production quotas were filled from another district owned by the petitioners, but said act is explained by respondent by saying that permission of filling it from another milling district was granted because the shortages could not be filled up from the milling district itself. The act of the respondent in the previous year can not, therefore, constitute as a precedent in the filling up to the 1953–1954 production quotas.

The court below cited in support of its decision the case of Suarez *vs.* Mount Arayat Sugar Co., Inc., G. R.

No. L–6435, in which case this Court, through Mr. Justice J. B. L. Reyes, held that original sugar allotments are *indivisible* and are "transferable only as a whole, by joint action of the interested parties" (the central and the planter). If sugar quota allocations may be disposed of only by joint action of the interested parties, it stands to reason that the sugar quota allocation of the haciendas belonging to the petitioners may not be filled up from a milling district in which petitioners have another plantation, against the express objection of the respondent milling district.

Another argument in support of petitioners' appeal is paragraph 3 of Field Service Instructions No. 7, Series 1952–1953, dated February 14, 1953, which in part provides:

"* * * Properly accomplished certificates of Shortage for export or domestic sugar of one mill district shall be used first to cover the 'C' sugar of the same district before any certificate of shortage of the dictrict may be used to cover non-district 'C' sugar: PROVIDED, HOWEVER, that a planter in one mill district who or whose spouse is also a planter in other mill districts may use his spouse's allotment shortage in one district to cover his or her spouse's own 'C' sugar in such other districts without waiting for the district 'C' sugar to be covered by Certificates of Shortage of the same district. * * * "

The above provision contained in a regulation implementing the Sugar Quota Act can not override the express provision of the latter, especially Section 8–A which is inserted by Republic Act No. 1072. The above provision of the Field Service Instructions must be understood to be applicable only in cases where shortages in one milling district may be filled from another milling districts in accordance with Republic Act No. 1072.

The above considerations clearly demonstrate the correctness of the conclusion arrived at by the respondent judge below in denying the petition for mandamus. It is not necessary for Us to consider the other reason adduced by the trial court below, also questioned by the petitioners in this appeal, that when an owner leases his hacienda in a milling district, the lessee is the planter within the meaning of the Sugar Quota Allocation Act.

The decision appealed from is hereby affirmed, with costs against petitioners-appellants.

Parás, C. J., Bengzon, Padilla, Montemayor, Concepción, Reyes, J. B. L., Endencia, Barrera, and *Gutiérrez David, JJ.*, concur.

Bautista Angelo, J., reserves his vote.

Judgment affirmed.

[No. L-13194. January 29, 1960]

BUENAVENTURA T. SALDAÑA, plaintiff and appellant, *vs.* PHILIPPINE GUARANTY COMPANY, INC., et al., defendants and appellees.

1. CHATTEL MORTGAGES; GENERAL DESCRIPTION OF PROPERTY VALID.—Section 7 of Act No. 1508, commonly known as the Chattel Mortgage Law, does not demand a minute and specific description of every chattel mortgaged in the deed of mortgage but only requires that the description of the properties be such "as to enable the parties in the mortgage, or any other person, after reasonable inquiry and investigation to identify the same". Gauged by this standard, general descriptions have been held valid.

2. ID.; ID.; LIMITATION IN SECTION 7 OF THE CHATTEL MORTGAGE LAW.—The limitation found in the last paragraph of section 7 of the Chattel Mortgage Law on "like or substituted properties" makes reference to those "*thereafter* acquired by the mortgagor and placed in the same depository as the property originally mortgaged", not to those already existing and originally included at the date of the constitution of the chattel mortgage. A contrary view would unduly impose a more rigid condition than what the law prescribes, which is that the description be *only such as to enable identification after a reasonable inquiry and investigation.*

APPEAL from orders of the Court of First Instance of Manila. Bayona, *J.*

The facts are stated in the opinion of the Court.

Gatchalián & Padilla for the plaintiff and appellant.

Emiliano Tabasondra for the defendant and appellee Company.

Teodoro Padilla for the other defendants and appellees.

REYES, J. B. L., *J.:*

This case arose from a complaint for damages filed by Buenaventura Saldaña (docketed as Civil Case No. 32703 of the Court of First Instance of Manila) that was dismissed by order of the court dated August 20, 1957, for lack of sufficient cause of action. In another order of September 30, 1957 of the same court, plaintiff's motion for reconsideration was denied, and the case was appealed to this Court.

The facts are that on May 8, 1953, in order to secure an indebtedness of ₱15,000.00, Josefina Vda. de Eleazar executed in favor of the plaintiff-appellant Buenaventura Saldaña a chattel mortgage covering properties described as follows:

"A building of strong materials, used for restaurant business, located in front of the San Juan de Dios Hospital at Dewey Boulevard, Pasay City, and the following personal properties therein contained:

1 Radio, Zenith, cabinet type
1 Cooler
1 Electric range, stateside, 4 burners

1 Frigidaire, 8 cubic feet
1 G.E. Deepfreezer
8 Tables, stateside
32 Chromium chairs, stateside
1 Sala set upholstered, 6 pieces
1 Bedroom set, 6 pieces.

And all other furnitures, fixtures or equipment found in the said premises."

Subsequent to the execution of said mortgage and while the same was still in force, the defendant Hospital de San Juan de Dios, Inc. obtained, in Civil Case No. 1930 of the Municipal Court of Pasay City, a judgment against Josefina Vda. de Eleazar. A writ of execution was duly issued and, on January 28, 1957, the same was served on the judgment debtor by the sheriff of Pasay City; whereupon, the following properties of Josefina Eleazar were levied upon:

8 Tables with 4 (upholstered) chairs each
1 Table with 4 (wooden) chairs
1 Table (large) with 5 chairs
1 Radio-phono (Zenith, 8 tubes)
2 Showcases (big, with mirrors)
1 Rattan sala set with 4 chairs, 1 table and 3 sidetables
1 Wooden drawer
1 Tocador (brown with mirror)
1 Aparador
2 Beds (single type)
1 Freezer (deep freeze)
1 Gas range (magic chef, with 4 burners)
1 Freezer (G.E.).

On January 31, 1957, the plaintiff-appellant Saldaña filed a third-party claim asserting that the above-described properties levied are subject to his chattel mortgage of May 8, 1953. In virtue thereof, the sheriff released only some of the properties originally included in the levy of January 28, 1957, to wit:

1 Radio, Zenith, cabinet type
8 Tables, stateside
32 Chromium chairs, stateside
1 G.E. Deep freezer.

To proceed with the execution sale of the rest of the properties still under levy, the defendants-appellees Hospital de San Juan de Dios, Inc. and the Philippine Guaranty Co., Inc. executed an indemnity bond to answer for any damages that plaintiff might suffer. Accordingly, on February 13, 1957, the said properties were sold to the defendant hospital as the highest bidder, for ₱1,500.00.

Appellant claims that the phrase in the chattel mortgage contract—"and all other furnitures, fixtures and equipment found in the said premises", validly and sufficiently covered within its terms the personal properties disposed of in the auction sale, as to warrant an action for damages by the plaintiff mortgagee.

There is merit in appellant's contention. Section 7 of Act No. 1508, commonly and better known as the Chattel Mortgage Law, does not demand a minute and specific description of every chattel mortgaged in the deed of mortgage but only requires that the description of the properties be such "as to enable the parties in the mortgage, or any other person, after reasonable inquiry and investigation to identify the same". Gauged by this standard, general descriptions have been held valid by this Court. (See Strochecker *vs.* Ramirez, 44 Phil. 993; Pedro de Jesus *vs.* Guam Bee Co., Inc., 72 Phil. 464)

A similar rule obtain in the United States courts and decisions there have repeatedly upheld clauses of general import in mortgages of chattels other than goods for trade, and containing expressions similar to that of the contract now before us. Thus, "and all other stones belonging to me and all other goods and chattels" (Russell *vs.* Winne, 97 Am. Dec. 755) ; "all of the property of the said W.W. Allen used or situated upon the leased premises" (Dorman *vs.* Crooks State Bank, 64 A.L.R.R. 614) ; "all goods in the store where they are doing business in E. City, N.C." (Davis *vs.* Turner, 120 Fed. 605) ; "all and singular the goods, wares, stock, iron tools, manufactured articles and property of every description, being situate in or about the shop or building now occupied by me in Hawley Street" (Winslow *vs.* Merchants. Ins. Co., 38 Am. Dec. 368), were held sufficient description, on the theory that parol evidence could supplement it to render identification of the chattels mortgaged possible. The prevailing rule is expressed in Walker *vs.* Johnson (Mont.) 124 A.L.R. 937:

"The courts and textbook writers have developed several rules for determination of the sufficiency of the description in a chattel mortgage. The rules are general in nature and are different where the controversy is between the parties to the mortgage from the situation where third parties without actual notice come in. In 11 C.J. 457, it is said: 'As against third persons the description in the mortgage must point out its subject matter so that such person may identify the chattels covered, but it is not essential that the description be so specific that the property may be identified by it alone, if such description or means of identification which, if pursued will disclose the property conveyed.' In 5 R.C.L. 423 the rule is stated that a description which will enable a third person, aided by inquiries which the instrument itself suggests, to identify the property is sufficiently definite.' In 1 Jones on Chattel Mortgages and Conditional Sales, Bower's Edition, at page 95 the writer says: 'As to them (third persons), the description is sufficient if it points to evidence whereby the precise thing mortgaged may be ascertained with certainty.' Here there is nothing in the description '873 head of sheep' from which anyone, the mortgagee or third persons, could ascertain with any certainty what chattels were covered by the mortgage.

"In many instances the courts have held the description good where, though otherwise faulty, the mortgage explicitly states that

the property is in the possession of the mortgagor, and especially where it is the only property of that kind owned by him."

The specifications in the chattel mortgage contract in the instant case are, we believe, in substantial compliance with the *"reasonable description rule"* fixed by the chattel Mortgage Act. We may notice in the agreement, moreover, that the phrase in question is found after an enumeration of other specific articles. It can thus be reasonably inferred therefrom that the "furnitures, fixtures and equipment" referred to are properties of like nature, similarly situated or similarly used in the restaurant of the mortgagor located in front of the San Juan de Dios Hospital at Dewey Boulevard, Pasay City, which articles can be definitely pointed out or ascertained by simple inquiry at or about the premises. Note that the limitation found in the last paragraph of section 7 of the Chattel Mortgage Law[1] on "like or substituted porperties" make reference to those *"thereafter* acquired by the mortgagor and placed in the same depository as the property originally mortgaged", not to those already existing and originally included at the date of the constitution of the chattel mortgage. A contrary view would unduly impose a more rigid condition than what the law prescibes, which is that the description be *only such as to enable identification after a reasonable inquiry and investigation.*

The case of Giberson *vs.* A.N. Jureidini Bros., 44 Phil. 216, 219, cited by the appellees and the lower court, cannot be likened to the case at bar, for there, what were sought to be mortgaged included two stores *with all its merchandise, effects, wares, and other bazar goods* which were being constantly disposed of and replaced with new supplies in connection with the business, thereby making any particular or definite identification either impractical or impossible under the circumstances. Here, the properties deemed covered were more or less fixed, or at least permanently situate or used in the premises of the mortgagor's restaurant.

The rule in the Jureidini case is further weakened by the Court's observation that (44 Phil. at p. 220)–

"Moreover, if there should exist any doubts on the questions we have just discussed, they should be thresed out in the insolvency proceedings,"

which appears inconsistent with the definitive character of the rulings invoked.

[1] "A chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding."

We find that the ground for the appealed order (lack of action) does not appear so indubitable as to warrant a dismissal of the action without inquiry into the merits and without submission of evidence, since the latter may supplement the description in the deed of mortgage (Nico *vs.* Blanco, 81 Phil. 213; Zobel *vs.* Abreau, 52 Off. Gaz. 3592).

WHEREFORE, the orders appealed from are set aside and the case remanded to the lower court for further proceedings. Costs against appellees.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, *Labrador, Concepción, Endencia, Barrera,* and *Gutiérrez David. JJ.,* concur.

Order set aside.

DECISIONS OF THE COURT OF APPEALS

[No. 24544-R. July 27, 1960]

RAYMUNDA NIÑAL, plaintiff and appellee, *vs.* EMILIO LUMABAS, defendant and appellant.

1. MALICIOUS PROSECUTION; ELEMENTS.—In order that a charge of malicious prosecution may prosper, two elements must be established: first, that the accusation was actuated with malice, and second, that there was no probable cause therefor.
2. ID.; MALICE.—Malice connotes that the complaint was instituted with willful intent either to injure the victim or to gain some advantage to the complainant or prosecutor, or through mere wantonness (54 C. J. S. 1005). "If one makes use of the criminal law for some collateral or private purpose and not to vindicate the law, such proceeding will be considered malicious, and this principle has been held applicable where it is shown that the sole purpose of the prosecution is to enforce the payment of a debt, to recover property, to establish rights under a contract, of for the purpose of extorting money, or merely as an experiment to find out who committed a particular crime." (p. 1006, *supra*).
3. ID.; PROBABLE CAUSE.—The question of probable cause is subjective in that the facts must be regarded from the point of view of the party prosecuting. The question is not what the actual facts were, but what he honestly and reasonably believed them to be. It is in no sense dependent on the guilt or innocence of the accused, but on the prosecutor's honest belief in such guilt, based on reasonable grounds. Probable cause is wanting where he acts on facts within his knowledge which, to his knowledge, do not constitute a crime; where at the time of commencing the prosecution, he knows that no crime has been committed or that the accused is innocent; or where, notwithstanding the sufficiency of the facts on which he makes his accusation, he has knowledge of other facts which satisfactorily show the accused's innocence. And while malice may be inferred from want of probable cause, want of probable cause may not be inferred from malice. (54 C. J. S. 977, 986, 989, 1007-1008).

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Fernández, *J.*

The facts are stated in the opinion of the Court.

Fernandez, Ponteas & Javier, for defendant and appellant.

Jesus P. Narvios, for plaintiff and appellee.

MAKALINTAL, *J.:*

The plaintiff filed the present action in the Court of First Instance of Negros Occidental for the recovery of moral and exemplary damages and attorney's fees from the defendant by reason of a complaint for estafa filed by the latter against the former in the Justice of the Peace Court of Escalante, same province. The plain-

tiff was acquitted therein and the court *a quo*, holding that the prosecution was malicious, rendered judgment in her favor and sentenced the defendant to pay her ₱5,000 as moral damages, ₱2,000 as exemplary damages and ₱1,000 as attorney's fees, plus costs.

The case came about in connection with two contracts of lease of agricultural lands which the plaintiff executed in favor of the defendant. The first contract is dated July 12, 1954, covering two parcels known as lots Nos. 2976 and 202 of the Escalante Cadastre (Exh. "A"). The term agreed upon was five years. On October 23, 1956, however, the parties agreed to cancel the lease with respect to lot No. 2976 and to extend the term to 6 years with respect to lot No. 202 (Exh. "B"). According to the plaintiff, on November 24, 1956, or about a month after the modification of the contract, the defendant gathered coconuts and other fruits from lot No. 2976. Upon being informed thereof she decided to file a complaint for qualified theft against the defendant, and for that purpose she went to Escalante together with her lawyer, Atty. Próspero Manuel, on January 6, 1956. (She was then residing in Cebú where she was a public school teacher.) In a conference held the next day in the office of the Chief of Police of the said municipality between her lawyer and the defendant, assisted on that occassion by his own counsel, there was an attempt to settle the matter amicably and to that end a draft of settlement was prepared (Exh. "C"). But when the document was presented to the plaintiff for signature she refused to sign it on the ground that there were certain conditions therein to which she objected. In view of the failure of the proposed settlement she announced that she was decided to go through with the filing of the criminal case.

The second contract of lease was executed on June 4, 1958 and covered 4 parcels, namely, lots 1424, 1425, 1417—part and 1438, also of the Escalante Cadastre. The period of the lease was two years, at an annual rental of ₱250.00 (Exh. "J"). It turned out that lot No. 1417-part had previously been sold by the plaintiff to one Benjamin Beber, as evidenced by the deed of sale dated April 29, 1954, marked in the record as Exhibit "7". With reference to lot No. 1438 it appears that the same was being claimed by a certain Vicente Kho and his brothers and sisters, in whose behalf the law firm of Hilado and Hilado sent the defendant three letters dated July 19, August 5 and September 8, 1955, respectively, demanding that he relinquish possession of the property (Exhs. "8", "9" and "10"). Presumably because the defendant did not heed the demand, the said claimants

filed an action against him as lessee and against the plaintiff herein as lessor, for recovery of possession and for damages. Neither of them filed an answer to the complaint and consequently a default judgment was rendered on August 22, 1956, ordering them to deliver the possession of lot No. 1438 to the plaintiffs and sentencing Raymunda Niñal alone to pay ₱2,800.00 as damages and ₱500.00 as attorney's fees, and both defendants to pay the costs (Exh. "12").

When on January 7, 1957 the proposed amicable settlement between the parties in connection with the first contract of lease fell through and the plaintiff voiced her decision to file a complaint for qualified theft against the defendant, the latter countered with a complaint for estafa against the former on the ground that she had deceived him by including in the second lease two parcels of land which did not belong to her. The complaint was investigated on January 8, 1957 by the Municipal Mayor of Escalante, Amando M. Tambo, in view of the absence of the Justice of the Peace, Vicente F. Delfín. The record does not show that the case was actually docketed on that date. Anyway the Mayor issued a warrant of arrest, which was served by a policeman upon the plaintiff, but in view of her vehement protest, with the assistance of her brother, she was not actually taken into custody and was therefore able to leave for Cebú early in the morning of January 9, 1957. On the following January 19 the Justice of the Peace cancelled the warrant of arrest on the ground that in his opinion the Mayor had no authority to issue it. Subsequently, however, upon a complaint signed by the police lieutenant of Escalante and actually filed and docketed in the same court, a warrant of arrest was issued, in which the amount of the bail bond was fixed at ₱2,000.00. This warrant was served upon the plaintiff in Cebú in February 1957, whereupon she immediately posted the bond required.

On April 29, 1957 the Justice of the Peace Court rendered its decision acquitting the plaintiff on the ground that the charge of estafa had not been proven beyond reasonable doubt (Exh. "L").

Alleging that the said criminal case had been filed by the herein defendant maliciously and without probable cause the plaintiff instituted the present case for damages on June 15, 1957. The court *a quo*, in rendering judgment for the plaintiff, ruled that the filing of the complaint for estafa constituted malicious prosecution and therefore was a ground for the award of moral damages under Art. 2219 of the Civil Code, exemplary damages

under Art. 2229, and attorney's fees, presumably under Art. 2208.

In order that a charge of malicious prosecution may prosper two elements must be established: first, that the accusation was actuated with malice, and second, that there was no probable cause therefor. Malice connotes that the complaint was instituted with willful intent either to injure the victim or to gain some advantage to the complainant or prosecutor, or through mere wantonness (54 C.J.S. 1005). In the same citation, p. 1006, it is said that—

"If one makes use of the criminal law for some collateral or private purpose and not to vindicate the law, such proceeding will be considered malicious, and this principle has been held applicable where it is shown that the sole purpose of the prosecution is to enforce the payment of a debt, to recover property, to establish rights under a contract, or for the purpose of extorting money, or merely as an experiment to find out who committed a particular crime."

In Buenaventura et al. *vs.* Sto. Domingo et al., G.R. No. L–10651, March 29, 1958, it was held:

"* * * that the provisions of the Civil Code making reference to malicious prosecution must necessarily imply that the persons to be held liable to pay moral damages should have acted deliberately and with knowledge that his accusation of the person subject of such malicious prosecution, was false and groundless; the same is true as regards the demand for attorney's fees and expenses for litigation authorized under Art. 2208, No. 3 of the Civil Code."

We may go along with the conclusion of the trial court that the defendant was actuated with malice when he initiated the criminal action against the plaintiff. In the first place, the contract of lease from which the charge of estafa arose, that is, the contract dated June 4, 1955, was by mutual consent, and in fact upon suggestion by the defendant himself, considered terminated sometime in March 1956, even before the first year of the two-year term was over. On the 17th of that month the defendant wrote a letter to the plaintiff (Exh. "K") telling her that he was not in a position to pay the increased rent of ₱300.00 a year which she was demanding and authorizing her to lease the three properties to other persons. He did not then complain that he had been deceived. In the second place, he never protested to the lessor that he had not been able to take possession of lot No. 1417-part, one of the leased parcels, because it had been sold to Benjamín Beber, or that he had been deprived of the possession of lot No. 1438 by the Koh family, for whom demand letters had been sent to him by the law firm of Hilado and Hilado. It was only

when the plaintiff refused to sign the amicable settlement in connection with the first lease and the alleged theft of coconuts by the defendant that the latter thought of accusing her in turn. And finally, the rapid succession of events, which took place on January 8, 1957, the day after the proposed settlement failed to materialize, shows that the defendant's purpose in filing the estafa case was not really to obtain redress for having been deceived by the plaintiff but to advance his own countermove in view of her announcement that she would file a complaint for qualified theft against him. So at his instance the Municipal Mayor of Escalante first summoned the plaintiff to appear before him and then when she declined to do so, followed it with a warrant of arrest even before the complaint had been actually filed and docketed in the Justice of the Peace Court.

However, we are not prepared to uphold the finding, implied in the decision appealed from, that the element of want of probable cause in the charge of estafa has has likewise been established in order to make out a case of malicious prosecution. There is no dispute between the parties as to the legal principles applicable to this aspect of the case. The question of probable cause is subjective in that the facts must be regarded from the point of view of the party prosecuting. The question is not what the actual facts were, but what he honestly and reasonably believed them to be. It is in no sense dependent on the guilt or innocence of the accused, but on the prosecutor's honest belief in such guilt, based on reasonable grounds. Probable cause is wanting where he acts on facts within his knowledge which, to his knowledge, do not constitute a crime; where at the time of commencing the prosecution, he knows that no crime has been committed or that the accused is innocent; or where, notwithstanding the sufficiency of the facts on which he makes his accusation, he has knowledge of other facts which satisfactorily show the accused's innocence. And while malice may be inferred from want of probable cause, want of probable cause may not be inferred from malice. (54 C.J.S. 977, 986, 989, 1007-1008)

The decision of the Justice of the Peace Court of Escalante acquiting the herein plaintiff in the case of estafa filed against her by the defendant has a material bearing on the presence or absence of probable cause in the accusation. The court there stated that the accused had received advance payment of the annual rental in accordance with the lease contract; that the complainant was never in possession of lot No. 1417-part in view of the prior right of Benjamín Beber;

and that the accused did actually deceive said complainant in leasing to him a property which no longer belonged to her. The accused was however acquitted because "damage as an element of estafa has not been proven beyond reasonable doubt," the court adding that "the aggrieved party is not estopped to file a separate civil action to recover such damage."

The Municipal Mayor of Escalante testified that after the plaintiff failed to appear pursuant to the summons he issued for the purpose of settling her controversy with the defendant, he told the latter that he could do nothing more in the matter and advised him to look for a lawyer instead; that the defendant left his office, but came back the same morning with Attorney Raymundo Ponteras and presented his complaint for estafa, supported by an affidavit; and that he, the Mayor, then conducted a preliminary investigation in the absence of the Justice of the Peace and, finding that there was a *prima facie* case, issued the corresponding warrant of arrest. The Justice of the Peace himself, Vicente F. Delfín, likewise testified and said that his own preliminary investigation also convinced him of the existence of a *prima facie* case, for which reason he himself issued another warrant of arrest—the one which was later on served upon the plaintiff in Cebú. It is therefore quite clear that while it was the defendant who initiated the estafa case, he did so upon advice of counsel and that it was investigated first by the Mayor and then by the Justice of the Peace, both of whom were convinced that the complaint should be given due course. This would seem sufficient to absolve the defendant of further responsibility in the matter. But the plaintiff insists that if those officials acted as they did it was because the defendant withheld from them certain facts indicative of her innocence. These facts, according to her, are: that the inclusion of lot No. 1417-part in the contract of lease was an innocent mistake on her part; that her intention was to lease four parcels to the defendant and she left it to the notary public who drafted the contract to state the lot numbers of those four parcels; that because the notary public, Félix Carreón, was the same one who prepared the deed of sale of lot No. 1417-part in favor of Benjamín Beber, she took it for granted that the enumeration of the parcels in the contract of lease was correct; and that in any case, although the defendant was not able to take possession of lot No. 1417-part, he occupied another parcel instead, namely, lot No. 1423, for the duration of the lease. With respect to lot No. 1438 the plaintiff testified that although the defendant was ordered to vacate

the same by the Court of First Instance of Negros in the civil case filed by the Koh family, the decision was rendered only on August 22, 1956 (Exh. "12"), after the parties to the contract of lease had agreed to terminate the same, which was in the previous month of March. In other words, the plaintiff contends, the defendant suffered no damages whatsoever and knew that fact for a certainty when he filed the criminal case.

We are unable to agree completely with this contention of the plaintiff. There was never any attempt on her part to amend the lease contract so as to make it appear that one of the lots supposed to be leased was not lot No. 1417-part but lot No. 1423; and aside from her bare testimony there is no evidence to prove that the defendant was indeed in possession of the latter parcel. Then, although the lease contract was by common consent rescinded in March 1956, the rental for one year which had been paid in advance by the defendant for the period ending June 4, 1956, was not refunded even in part. Finally, it cannot be said, in connection with lot No. 1438, that the defendant suffered no damages at all simply because he was ordered to vacate the same only in August 1956, months after the lease contract had been rescinded. Disregarding his testimony that he actually surrendered possession of the said lot immediately after receiving the last letter of the claimants' lawyers on September 10, 1955 (Exh. "10") the fact remains that the defendant was made a party in the case filed by said claimants for recovery of possession and damages and that he was sentenced therein to pay the costs. To be thus sued and ordered to pay costs is certainly to sustain damage, however slight. One noteworthy circumstance which does not speak well of the plaintiff is that she did not even bother to answer the complaint in the said case and to defend her lessee's rights. In this connection she cannot excuse herself that the lease had been terminated, for she was declared in default on March 3, 1956 and the defendant's letter suggesting the termination of the lease is dated the following March 17.

It is one thing to say that in the criminal case for estafa filed by him the defendant was not able to prove the essential element of damage and another thing altogether to say that he suffered no damage at all and knew positively that none had been caused to him. The court itself which heard and decided that case declared that he could still file a separate civil action notwithstanding the acquittal of the accused.

We hold, upon all the evidence of record, that the element of want of probable cause has not been estab-

lished. The defendant must therefore be absolved from liability. He has filed a counterclaim for damages against the plaintiff on the similar ground that this action has been maliciously filed. In view of our finding that the defendant was not himself free from malice in initiating the criminal case against the plaintiff, although there was probable cause for him to do so, he is not entitled to recover on the said counterclaim.

WHEREFORE, the judgment appealed from is hereby reversed and the complaint as well as the defendant's counterclaim are both dismissed, without pronouncement as to the costs.

SO ORDERED.

De León and *Castro, JJ.*, concur.

Judgment reversed.

[No. 25988–R. July 25, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* CONRADO MESINA, accused and appellant.

1. CRIMINAL LAW; EVIDENCE; ALIBI.—Oral evidence of *alibi* is ordinarily not given credence because it can easily be concocted and is unreliable, and same certainly cannot be credited where the accused admitted that he is unaware of any ill motive on the part of the complainant for imputing to him the commission of a grave offense such as robbery with frustrated homicide. (U. S. *vs.* Garcia, 26 Phil. 289; People *vs.* Dy Too, 47 O. G. No. 11, 5682; People *vs.* Niem, et al., 75 Phil. 668).
2. ID.; ID.; TESTIMONY OF ONE WITNESS SUFFICIENT BASIS FOR CONVICTION; EXCEPTION.—Except in cases of treason, the positive and credible testimony of one witness is sufficient basis for conviction.

APPEAL from a judgment of the Court of First Instance of Batangas. Tengco, *J.*

The facts are stated in the opinion of the Court.

Jesus B. Santos, for accused and appellant.

Assistant Solicitor General Jose P. Alejandro and *Solicitor Octavio R. Ramirez,* for plaintiff and appellee.

CABAHUG, *J.:*

Conrado Mesina and Tomas Olaes were indicted for the crime of robbery with frustrated homicide in Criminal Case No. 1321 of the Court of First Instance of Batangas. After trial upon a plea of not guilty, the latter was acquitted while the former was convicted and sentenced to suffer an indeterminate penalty of from 8 years and 1 day of *prision mayor* to 14 years, 8 months and 1 day of *reclusion temporal,* to indemnify Hermenegildo Lopez in the total amount of ₱650.00 and Eugenia Manabat, in the amount of ₱610.00, and to pay one-half of the costs. This is the appeal of the convicted accused.

It appears that on April 1, 1958, Eugenia Manabat and her son Hermenegildo Lopez boarded a passenger jeep driven by Tomas Olaes at Calamba, Laguna, bound for Tanauan, Batangas, where mother and son intended to buy cattle for slaughter. On the way, when the vehicle stopped in front of a rice mill in barrio Sta. Anastacia, municipality of Sto. Tomas, appellant and his mustached companion called Asiong, who were then occupying the from seat beside the driver, alighted and went to the open rear door of the jeep. Appellant then fired a shot, and when he saw Lopez stand up and move to use his revolver, appellant fired the subsequent shots directly at Lopez, who was hit on the elbow and fell on the lap of his mother. Asiong immediately grabbed Lopez' licensed Smith and Wesson revolver while appellant snatched Manabat's basket which, however, contained only ₱10.00

since the ₱1,000.00 with which they were to pay for the cattle was hidden in the inner pocket of her skirt. Once in possession of the basket, appellant fled, shouting, "Asiong, kill him". Before escaping, Asiong fired more shots and succeeded in hitting Lopez on the left femur. After receiving first aid treatment, Lopez was brought to the National Orthopedic Hospital where his affected parts were placed in plaster cast. He was still with the cast on July 2, 1958, when he testified as a witness for the prosecution. According to his attending physician, Dr. Inocentes, Lopez would be disabled for at least 8 months (exh. A dated April 7, 1958).

Asiong not having been arrested, only Tomas Olaes and appellant were prosecuted, with the result mentioned in the first paragraph of this decision. Appellant's defense was a simple alibi. According to him, from March 29 to April 4, 1958, he was in his house in Tulo, Turbina, Calamba, sick with urticaria and unable to walk; and that for treatment he took Cortal and *carabaña*. Appellant alleged that he does not know the offended parties nor does he remember seeing them before; but he also admitted that he does not "see any sinister or false motive for them to testify against him" (p. 14, appellant's brief; p. 11, t.s.n., Lunar). To corroborate appellant's testimony, Lazaro Canta testified that at about 9:00 a.m. on April 1, 1958, he went to the house of appellant's father and saw appellant suffering from headache and urticaria, and that when he, the witness, went back the following day, he found appellant in the same condition. Victor Castro declared that upon the prodding of his wife, who is a pharmacist, he went to Tomas Mesina's house on March 31, 1958 and gave appellant first aid treatment. When Castro went back the next day, he was told that appellant's fever had considerably subsided.

The only question raised in this appeal is the credibility of the opposing witnesses. Appellant contends that it was an error for the trial court to give full credence to the testimonies of the witnesses for the prosecution since their declarations are full of inconsistencies, contradictions and are contrary to the ordinary course of human conduct. However, our review of the record failed to show any circumstance or fact of importance which had been misconstrued or disregarded by the lower court in its evaluation of the evidence. We cannot therefore properly disturb the lower court's finding on the credibility of the witnesses.

Moreover, whatever inconsistencies and contradictions may be found in the declarations of the two offended parties as regards the place where the first two passen-

gers alighted from the jeep; the number of passengers who sat with the driver on the front seat; and the improbability that the malefactors would perpetrate the crime in front of a rice mill in the vicinity of which there were many houses, are immaterial and are of no consequence in view of the character of appellant's defense. Besides, it was openly admitted by the defense through the testimony of Tomas Olaes, one of its witnesses, that the hold-up really took place in front of a rice mill in barrio Sta. Anastasia, wherein a woman and her son were the victims, and during which a shooting took place resulting in the wounding of the son.

Coming now to the defense of alibi, we find that it has not been clearly, properly and positively established. It is well settled that oral evidence of alibi, as in the case at bar, is ordinarily not given credence, because it can easily be concocted and is usually unreliable. It is to be noted that appellant is personally known to one of the offended parties, Hermenegildo Lopez, because on the Friday prior to the date of occurrence, Lopez, while riding on a bus, saw appellant and a companion board the same bus and refuse to pay their fares thereby motivating Lopez to suggest to the conductor to stop the bus at a place in Biñan, Laguna, where appellant was denounced to a policeman and a PC soldier. So, when Lopez and his mother boarded the jeep in Calamba on April 1, 1958, Lopez noticed and immediately recognized appellant. And when appellant fired the shots at Lopez, the latter clearly saw and positively identified appellant. Considering also that appellant admitted that he is not aware of any ill motive on the part of Lopez for imputing to him (appellant) such a grave offense as the one charged herein, appellant's alibi certainly cannot be credited (U.S. *vs.* Garcia, 26 Phil. 289; People *vs.* Dy Too, 47 O. G. No. 11, 5682; People *vs.* Niem, et al., 75 Phil. 668).

The fact that Eugenia Manabat, because of her poor eyesight, could not identify appellant, does not enervate Lopez' positive identification of appellant. For it is likewise well settled that except in cases of treason, the positive and credible testimony of one witness is sufficient basis for the conviction of an accused.

Upon the other hand, it is unbelievable that urticaria, which is simply 'an inflammatory disease of the skin, characterized by wheals, accompanied with itching," would render appellant unable to walk.

The robbery charged herein having been committed with violence and intimidation upon the persons of the aggrieved parties, causing physical injuries which disabled Lopez from his ordinary work for at least 8 months (exh. A), the crime is punishable under article 294, num-

ber 4 of the Revised Penal Code, with *prision mayor* in its maximum period to *reclusion temporal* in its medium period. Applying the Indeterminate Sentence Law, the minimum imposable penalty should be *prision correccional* in its maximum period to *prision mayor* in its medium period. In the absence of any modifying circumstance, this penalty fixed by the same law and the one fixed by the article and number aforecited, should be imposed in their medium degrees, or from 5 years, 5 months and 1 day of *prision correccional* to 6 years, 8 months and 20 days of *prision mayor,* as minimum, and 12 years and 1 day to 14 years and 8 months of *reclusion temporal,* as maximum. Therefore, the heaviest punishment that may be meted out to appellant is an indeterminate penalty of from 6 years, 8 months and 20 days of *prision mayor* to 14 years and 8 months of *reclusion temporal.*

WHEREFORE, thus modified as regards the principal penalty, the appealed judgment is affirmed, with costs against appellant.

IT IS SO ORDERED.

Dizon and *Makalintal, JJ.,* concur.

Judgment modified.

[No. 9361-R. July 28, 1960]

GRACE PARK ENGINEERING, plaintiff and appellee, *vs.* ESPERANZA YUZON and ARCADIO QUIAMBAO, defendants and appellants.

OBLIGATIONS AND CONTRACTS; PERFORMANCE; INCOMPLETENESS OR IRREGULARITY; PROTEST, LACK OF.—Under Article 1235 of the Civil Code, where the obligee accepts the performance of an obligation, knowing its incompleteness or irregularity, and does not protest or object thereto, the failure to protest precludes said obligee from thereafter questioning the performance of the obligor's obligation under the contract (cf. Campbell and Co-Tauco *vs.* Behn, Meyer & Co., 3 Phil. 590; Naval vs. Benavides, 8 Phil. 253-254; Choy *vs.* Heredia, 12 Phil. 259)

APPEAL from a judgment of the Court of First Instance of Rizal. Gatmaitan, *J.*

The facts are stated in the opinion of the Court.

Jesus B. Santos, for defendants and appellants.

Sycip, Quisumbing, Salazar & Associates, for plaintiff and appellee.

CASTRO, *J.:*

The plaintiff seeks to recover the amount of ₱11,558.40, with legal interest, representing the unpaid balance due to the plaintiff for the repair of an engine and a rice mill belonging to the defendant spouses, and the sum of ₱3,000 in the concept of Attorney's fees. After due trial, the court *a quo* rendered judgment ordering the defendants to pay to the plaintiff the sum of ₱10,558.40, with legal interest from the date of the filing of the complaint, and the costs.

The defendants now contend that the lower court erred:

1. in not holding that the defendants are entitled to withhold the amount of ₱11,558.40 from the plaintiff;

2. in not awarding damages to the defendants for plaintiff's violation of the contract; and

3. in not discrediting entirely the testimony of Gregorio Favor for being incompetent.

The following facts are not disputed: On July 22, 1946, the defendant Esperanza Yuzon, assisted by her husband and co-defendant Arcadio Quiambao, entered into an agreement (exh. B) with the plaintiff, Grace Park Engineering, under the terms of which the plaintiff was to repair the defendants' engine and rice mill located in Gapan, Nueva Ecija. The plaintiff was to place the engine "in running condition within a period of forty-five working days" in consideration of the sum of ₱6,000, payable in three installments, to wit: 50% (₱3,000) upon the execution of the contract, 25% (₱1,500) as soon as 50% of the repair job was finished, and the balance (₱1,500) upon plaintiff's presenting the engine in running condition. With respect to the rice mill, the plaintiff undertook to

rebuild and repair it for a consideration of ₱32,000, of which 50% (₱16,000) was to be paid upon the defendants' sending notice to the plaintiff to start repair on the mill, 25% (₱8,000) as soon as 50% of the installation was finished, and the remainder (₱8,000) as soon as the mill was placed in running condition.

Whether the contemplated repairs were fully made is the crux of the controversy. There is no dispute, however, that out of the contract price and other miscellaneous expenses chargeable to the defendants in the aggregate sum of ₱38,195.40, the defendants have paid ₱26,637, leaving only a balance of ₱11,558.40, which defendants have refused to pay in spite of the plaintiff's several letters of demand.

We are concerned chiefly with the defendants' main contention that they are entitled to withhold the amount of ₱11,558.40 from the plaintiff, because the plaintiff violated the terms of the contract (exh. B).

Regarding the engine, the defendants first contended in their answer that the plaintiff failed to install the engine within the 45-day period stipulated in the contract. There is no indication in the contract as to when this period starts to run. At one time, the defendants' counsel went as far as to admit that the period was to be counted from the time the engine was installed. It is apparent that the defendants themselves realized the futility of the foregoing theory, because they completely discarded it at the trial, not only by failing to introduce evidence in support of their contention, but also by making of record the admission that repairs were completed as early as July, 1946 (within 45 days from the date the contract was executed, assuming for the defendants' benefit that the period was to be counted therefrom), although arguing that the installation was made in November, 1946. It does not appear clear to us whether the plaintiff undertook to finish the installation within the aforesaid period of 45 days. The plaintiff's obligation with respect to the engine pursuant to the contract was merely to "place the same in running condition within a period of forty-five working days." There is thus no mention of a definite obligation on the part of plaintiff to likewise complete the installation of the engine after the same was placed in running condition. At all events, the plaintiff was fully justified in not finishing the installation of the engine until November, 1946, notwithstanding the completion of the repairs thereon a few month before that. The plaintiff explained through its witnesses, Francisco Lejano and Co Cho Chit, that the defendants failed to fulfill their counterpart obligation to pay the second installment in the sum of ₱1,500 under paragraph 1(e) of the contract as soon as 50% of the repair job was finished. Article 1169 of the Civil Code

provides: "In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him." It was incumbent on the defendants to pay the second installment of the repair price of the engine in July 1946, when, by admission of their own counsel, more than 50% of the repair job had been finished. Since the second payment was made only on November 6, 1946, the plaintiff was clearly justified in making the installation only then.

At the trial, the defendants shifted to a new thesis. Arcadio Quiambao, the defendants' principal witness, complained that at the test run of the engine, it was found not to be self-starting. If there was any deficiency in the repair of the engine, it was clearly insignificant. Indeed, what could be better proof, as the trial court correctly observed, that the defendants were satisfied with the repair of the engine than that they made another payment of ₱6,000 under the contract on January 9, 1947, two months after the installation of the engine?

Concerning the rice mill, the defendants maintain that the plaintiff failed to finish the repair within 90 working days counted from November 5, 1946, the date on which defendants made the first payment of ₱16,000 under the contract. The plaintiff's witnesses declared that the installation took place during the first week of February, while the defendant Quiambao claimed that it was only in March that the first test on the engine was made. The trial court's finding was that the first test was made on February 14, 1947, the date shown on exhibit I, by which the plaintiff's witness acknowledged the receipt from M. Guzman of the sum of ₱10 for the purchase of gasoline. The trial court found that this gasoline "must in all probability be connected with the test." While not exactly upholding the plaintiff's version, the trial court, in effect, repudiated the defendants' contention. There is in this finding an element of conjecture which we are not, however, prepared to reverse. On the defendants rests the burden of proving their affirmative defenses. They can hardly expect us to give more credence to the contradicted testimony of their witness, Quiambao, in the absence of other evidence to substantiate his version or a well-grounded justification for us to completely disregard the plaintiff's evidence. The defendants' plea for a reversal of the trial court's finding must be based on something more cogent than the pious assertion of one witness which three other witnesses claim to be a lie.

The defendants rely heavily on the defense (set forth in their answer) that the plaintiff failed to repair the mill so as to make it operate with a milling capacity of 500 to 550 cavanes of palay, old stock, in 12 working hours. At the trial, the defendants came up with a new defense

namely, that the mill failed to give the stipulated turn-out of 2% to 3% of the milling capacity. The trial court notes with dismay the "hopeless conflict of evidence" on this point. The plaintiff's witnesses contend that the full capacity was reached and that the defendants themselves were lavish in their expression of satisfaction. The defendants, on the other hand, maintain that after the repair, only 55 cavanes could be milled in 2½ working hours—an enormous difference of about 50% less than the stipulated milling capacity. The following observations of the learned trial court demonstrate the lack of merit in the defendants' contentions:

"The Court is positively convinced and there should be no denying the fact, that defendants have accepted the benefits of plaintiff's work. Not only this: the Court is not at all convinced that the defects were as important as defendants seek to picture them to the Court. For if the rate of output was less by 50% than that stipulated, as has been said, defendants would not have operated the mill in May, 1947. And it cannot be said that they had already re-repaired the mill by then since Engineer Vasquez came in only in June, according to Dr. Quiambao. And going to the percentage of recovery, while the Court must accept the fact that where the reputation of a mill is that it gives a deficient percentage of recovery, the result should be to drive out clientele; the fact that in the answer of 2 March, 1948, defendants did not allege that as a ground for their counterclaim has impressed the Court that defendants themselves lay small importance to that deficiency for reasons of their own or possibly because the difference was not very big after all. Stated otherwise, the Court is persuaded that there was or must have been, substantial compliance with the contract."

The defendants have not advanced any reason for us to hold otherwise. We, who are in a more remote position from the witnesses and who can only follow the cold words of the transcript, are hardly called upon to reverse the trial court's finding when a close perusal of the records fails to reveal a reasonable basis for doing so. The defendant Quiambao, on whose testimony the defense was almost entirely dependent, was altogether to imprecise in his declarations. He failed to pinpoint any particular defect in the mill as causing its failure to produce the stipulated milling capacity. The defendants allege that they had to hire an engineer by the name of Vasquez to improve the capacity of the mill. The person who could thus best enlighten the court on this particular matter was Vasquez, but the defendants never even bothered to present him. This failure, coupled with the defendants' vacilation and apparent uncertainty in shifting their defense from one theory to another, lead us to believe that their contentions regarding the alleged failure of the plaintiff to live up to its obligations under the contract are nothing more than mere afterthoughts.

The defendants' second assignment of error is clearly due to a misconception on their part. It is not true, as

they maintain, that the trial court did not award damages in favor of the defendants. The records reveal that, aside from the fact that the trial court denied attorney's fees to the plaintiff, it likewise reduced the amount of recovery by ₱1,000. Finding that the plaintiff had substantially fulfilled its obligation to repair the defendants' engine and rice mill, the trial court awarded to the plaintiff the balance unpaid under the contract, deducting therefrom however the sum of ₱1,000 by way of damages in favor of the defendants for the plaintiff's failure to completely comply with its obligation. The basis of the trial court's decision is article 1234 of the Civil Code, which provides: "If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee." As the defendants' evidence falls far short of establishing the amount of damages, we have no reason to increase the award of ₱1,000. Indeed, the trial court has shown more generosity to the defendants than the law warrants. Article 1235 of the Civil Code, which embodies a general principle of law long recognized in our jurisdiction, provides: "When the obligee accepts the performance, knowing its incompleteness or irregularity, *and without expressing any protest or objection,* the obligation is deemed fully complied with." (Italics supplied). There is no question whatsoever that the engine and rice mill were delivered to the defendants and installed in their presence. There is, however, nothing in the record to indicate that the defendants protested the incompleteness or irregularity of the repair of the said engine and rice mill. While the court *a quo* shrugs this off as a mere act of discourtesy on the part of the defendants, we are inclined to attribute legal significance thereto in view of the aforecited provision. The failure of the defendants to protest precludes them from thereafter questioning the performance of the plaintiff's obligation under the contract (cf. Campbell and Co–Tauco *vs.* Behn, Meyer & Co., 3 Phil. 590; Naval *vs.* Benavides, 8 Phil. 253–254; Choy *vs.* Heredia, 12 Phil. 259), and from asking for any reduction of the cost of repairs. Nevertheless, if the trial court has demonstrated leniency in favor of the defendants, we deem it wise to leave the decision be, it appearing that the plaintiff did not appeal.

The third assignment of error concerning the plaintiff's witness, Gregorio Favor, hardly merits discussion; suffice it to say that the plaintiff has adduced other evidence sufficient and competent to sustain its cause of action.

ACCORDINGLY, the judgment *a quo* is affirmed *in toto,* with costs against the defendants-appellants.

De Leon and *Makalintal, JJ.,* concur.

Judgment affirmed.

[No. 16164-R. July 27, 1960]

TOMAS BESA, GLICERIA MOLO Y BADELLES, LUZ MOLO Y BADELLES and CORNELIO MOLO Y BADELLES, plaintiffs and appellees, *vs.* ALFREDO AGAPITO, EMILIANO REYES and RAMON A. SIYTANGCO, defendants; RAMON A. SIYTANGCO, defendant and appellant.

SALE; ENCUMBERED PROPERTY; DUTY OF PURCHASER IN GOOD FAITH.—Where the title to the properties to be purchased show on the face thereof that they are burdened with encumbrance in favor of "creditors, heirs and other persons unlawfully deprived of participation in the estate of the deceased as extra-judicially settled", a purchaser, in the exercise of ordinary prudence and good faith, should take the precaution of finding out how the estate was extra-judicially settled to enable him to determine whether, by purchasing the said properties, it would deprive someone of his rights thereto. If he fails to do so, he cannot claim good faith in purchasing the properties. "A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor" (Leung Yee *vs.* Strong Machinery Co., 37 Phil. 644, 651-2).

APPEAL from a judgment of the Court of First Instance of Rizal. Caluag, *J.*

The facts are stated in the opinion of the Court.

Cabral & Crisostomo and *Norberto E. Galban,* for defendant and appellant.

Tomas Besa, for plaintiffs and appellees.

NARVASA, *J.:*

This case involves the ownership of two parcels of land —lot No. 1, Block 102, PSD-1650, area 767 square meters, and lot No. 1, Block 65 PSD-1650, area 2,996 square meters—located in San Francisco del Monte, Quezon City, formerly registered under Transfer Certificate of Title No. 21230 and Transfer Certificate of Title No. 21234, Exhibits A and A-1, respectively, issued January 26, 1932, in the name of Juana Agapito y Cayetano (as her paraphernal property), married to Candido Molo. Juana Agapito y Cayetano died on December 2, 1934.

On December 17, 1934, Arcadia Agapito, widow, claiming to be "the only aunt left by my deceased niece Juana Agapito y Cayetano", executed an instrument (App. A, Compl.) whereby, "in our desire to comply with all the wishes of said Juana Agapito, as regards the distribution of her properties", the following described properties were disposed of:

"(*d*) The lot and building of the deceased Juana Agapito y Cayetano at No. 556 M. H. del Pilar, Ermita, Manila, known as lots 2 and 14, Block 302, district of Ermita, Manila, together with one-half of the lots known as the conjugal (sic) properties of Juana Agapito y Cayetano at San Francisco del Monte, San Juan del

Monte, province of Rizal, containing an area of 3,763 square meters Certificate of Titles Nos. 21230 and 21234; we hereby give and cede to the four brothers and sisters named Cecilia Magalinan married to Esteban Hernando, Natividad Magalinan married to Victoriano Agravio, Antero and Nicanor Magalinan so that the same may be theirs and be benefited thereby.

"(*e*) The remaining one half of the said lot at San Francisco del Monte, municipality of San Juan, province of Rizal, P.I., we hereby give and cede to the children of Candido Molo, named Gliceria, Luz, and Cornelio all surnamed Molo y Badelles".

The aforesaid instrument was declared a deed of donation, rather than that of partition, by this Court in decision penned by then Mr. Justice Bengzon, now of the Supreme Court, in the case of Arcadia Agapito, plaintiff–appellee, *vs.* Mariano H. de Joya, et al., defendants–appellants, CA–G. R. No. 4256, March 31, 1941. (Exh. C–3.)

During the last war, the ½ undivided portion of the two lots in question donated to the Magalinan brothers and sisters was ceded and transferred to Atty. Tomas Besa, one of the herein plaintiffs-appellees, in payment for his legal services in the case for the annulment of the above-mentioned instrument declared as deed of donation. The corresponding instrument of conveyance was executed but was burned or lost during the war (Test. of Natividad Magalinan, pp. 102–104; 108–110, t.s.n., Oct. 19, 1954; pp. 106–110, t.s.n., Oct. 21, 1954), for which reason the said document was not registered. Their signed copies of the deed of donation having likewise been destroyed during the war, the other plaintiffs–appellees were not also able to have said documents recorded. Besides, despite diligent search made therefor, the said plaintiffs-appellees could not locate the owner's copies of the Certificates of Title of the two lots in question. It was only a few months before the filing of this suit, on August 24, 1953, that they came to know that said owner's copies of the title certificates were in the possession of Atty. Fidel Silva, counsel for some of the donees in the deed of donation.

On April 2, 1951, defendant, Alfredo Agapito, filed a petition with the Court of First Instance, Quezon City, in GLRO Rec. No. 3563, praying that the owner's duplicates of the transfer certificate of title of the two lots in question (Nos. 21230 and 21234) be declared null and void, and that new ones, issued. Said petition was at first denied; but upon motion for reconsideration, at the hearing of which it was established that while the said owner's duplicate were in the possession of petitioner as heir of said owner, Juana Agapito, the same were lost during the occupation, the Court granted the petition in Order of April 18, 1951, and ordered the issuance of other owner's duplicates.

The same defendant Alfredo Agapito, claiming to be half-brother and the sole universal heir of Juana Agapito whose husband, Candido Molo, died in 1933 leaving no issue, executed an Affidavit of Adjudication, dated April 24, 1951, adjudicating to himself the aforementioned two lots in San Francisco del Monte, described in Transfer Certificate of Title Nos. 21230 and 21234, the said properties "have not been the subject of any transaction or negotiation during the occupation or since the liberation, and there are no documents pending registration in connection therewith." (Exh. B–2.) The said affidavit of adjudication was filed with the Register of Deeds of Quezon City who, on September 10, 1951, issued (1) Transfer Certificate of Title No. 16471, being transfer from Transfer Certificate of Title No. 16423, covering lot No. 1, Block 102, Psd–1577, area 767 square meters in the name of Alfredo Agapito, married to Esperanza Rototar (Exh. B–4), and (2) Transfer Certificate of Title No. 16472, being transfer from Transfer Certificate of Title No. 16424, covering lot No. 1, Block 65, Psd–1650, area 2,996 square meters, in the name of Alfredo Agapito married to Esperanza Rototar (Exh. B–5). In both title certificates there was annotated as memorandum of encumbrances the following: "To creditors, heirs and other persons unlawfully deprived of participation in the estate of the deceased Juana Agapito, as extra-judicially settled for a period of two (2) years, pursuant to Section 4, Rule 74 of the Rules of Court. Date of Instrument: April 24, 1951. Date of Inscription: Sept. 10, 1951 at 9:02 a.m."

On October 4, 1951, Alfredo Agapito sold the said two lots to his co-defendant herein, Emiliano Reyes, married to Alice Johnson Reyes, for ₱21,427.50, and Transfer Certificate of Title No. 16681 (Exh. B–7) and Transfer Certificate of Title No. 16682 (Exh. B–8) were issued to said vendee on October 5, 1951, both title certificates retaining the same memorandum of encumbrance already quoted above.

On December 7, 1951, Emiliano Reyes in turn sold the same two lots to the other defendant herein, Ramon A. Siytangco married to Julia Johnson Siytangco (Exh. B–9), and to protect said vendee on account of the aforementioned memorandum of encumbrances, vendor Emiliano Reyes, executed a surety bond in the amount of ₱8,000.00 in favor of vendee, Ramon A. Siytangco. As consequence of the last mentioned sale, on June 25, 1952, Transfer Certificate of Title No. 19140 (Exh. B–10) and Transfer Certificate of Title No. 19141 (Exh. B–11) were issued in the name of said Ramon A. Siytangco, both title certificates hearing the same annotation of memorandum of encumbrances above stated.

Plaintiff Tomas Besa, as successor-in-interest of the Magalinan brothers and sisters, donees in the above-mentioned deed of donation executed by Arcadia Agapito, and plaintiffs, Gliceria, Luz and Cornelio, surnamed Molo y Badelles, also donees, instituted this action on August 24, 1953, for the purpose of having the following documents declared null and void *ab initio*: (1) the aforesaid Affidavit of Adjudication executed by defendant, Alfredo Agapito (Exh. B–2) and Transfer Certificate of Title Nos. 16471 and 16472 issued in his name; (2) Transfer Certificate of Title Nos. 16681 and 16682 issued in the name of defendant, Emiliano Reyes; and (3) Transfer Certificate of Title Nos. 19140 and 19141 issued in the name of defendant, Ramon A. Siytangco, the two last mentioned title certificates to be surrendered to the Register of Deeds for cancellation and new ones issued in favor of plaintiffs in accordance with aforementioned deed of donation, Appendix A of the Complaint, and for damages.

Only defendant, Ramon A. Siytangco, appears to have filed answer with counterclaim for damages, alleging substantially, that the plaintiffs have been notoriously negligent and practically slept on their rights by not taking steps in registering their titles, the lots in question being registered under the Torrens system; that plaintiffs are not even in possession of the land and have not declared the same for taxation purposes in their respective names, and that plaintiffs' right to bring this action expired in April, 1953.

After trial, the Honorable Judge Hermogenes Caluag of the Court of First Instance of Quezon City rendered decision, the dispositive part of which reading:

"WHEREFORE, premises considered, this Court believes and so holds that plaintiffs are the legitimate owners of the parcels of land in question and that defendant Ramon A. Siytangco execute a deed of reconveyance to the plaintiffs herein. Furthermore, let a copy of this decision be furnished to the City Fiscal and investigate the actuations of Alfredo Agapito and Atty. I. C. Monsod and to take action as the result of his investigation may warrant. However, Ramon A. Siytangco may pursue other legal remedies which the law may grant him under the circumstances, with costs against Alfredo Agapito."

Not satisfied with the decision, defendant, Ramon A. Siytangco, removed the case with the usual formalities by appeal to this Court.

1. Appellant claims that the lower court erred in holding that he was not a purchaser for value in good faith, stating that while said court did not make a positive finding of bad faith on the part of appellant, the absence of good faith was a necessary premise of its conclusion that said appellant was not the lawful owner of the properties in dispute, and that in thus failing to find that appellant was a *bona fide* purchaser for value, it committed

It is true that in the decision it is stated that the question in issue "is whether the defendant (appellant) Ramon A. Siytangco having a transfer certificate of title in his name is the lawful owner of the land in question and whether he can be considered a purchaser for value in good faith." However, the lower court decided the case simply because it was "constrained to hold that defendant (appellant) Ramon A. Siytangco holds the title to the land subject to the encumbrance embodied in the annotation previously stated." This being the case, it is not deemed necessary to go into appellant's discussion upon this point.

Anyway, it would seem that, inasmuch as the titles to the properties he purchased showed on the face thereof that they were burdened with encumbrance in favor of "creditors, heirs and other persons unlawfully deprived of participation in the estate of the deceased Juana Agapito as extra-judicially settled", appellant should have, in exercise of ordinary prudence and good faith, taken the precaution of finding out how the estate was extra-judicially settled to enable him to determine whether, by purchasing the two lots in question from the vendor, he would deprive anyone of his rights thereon. Appellant having not done so cannot claim that he acted in good faith in purchasing the said properties under the belief that there was no defect in the title of the vendor. Had appellant done the necessary inquiry, he would have discovered that Alfredo Agapito who sold the said lots to Emiliano Reyes from whom he (appellant) was to buy the same lots was not among the donees or distributees in the estate of Juana Agapito as extrajudicially settled and that Alfredo Agapito had no right to adjudicate unto himself the said two lots. Appellant would also have discovered that the said properties which he was buying for ₱8,000.00 from his *"bilas"*, Emiliano Reyes, were bought by the latter only two months previously for ₱21,427.00 from the aforesaid Alfredo Agapito. In the case of Leung Yee *vs.* Strong Machinery Co., 37 Phil. 644, 651–2, we read the following:

"One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser of value, if

it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation. Good faith, or the lack of it, is in its last analysis a question of intention; but in ascertaining the intention by which one is actuated on a given occasion we are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. So it is that 'the honesty of intention,' 'the honest lawful intent', which constitutes good faith implies a 'freedom from knowledge and circumstances which ought to put a person on inquiry,' and so it is that proof of such knowledge overcomes the presumption of good faith in which the courts always indulge in the absence of proof to the contrary."

2. Appellant also claims that the lower court erred in holding that the plaintiffs–appellees fall under the general heading provided for in Section 4, Rule 74, of the Rules of Court.

Section 1, Rule 74, in part provides: "If there is only one heir or one legatee, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds". Section 4 pertinently provides: "If it shall appear at any time within two years after the settlement and distribution of an estate in accordance with the provisions of either of the *first two* sections of this rule, that an heir or *other person* has been unduly deprived of his lawful participation in the estate, such heir or such *other person* may compel the settlement of the estate in the Courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. * * * Such bond (required by Section 3 if property other than real estate is to be distributed) and such real estate shall remain charged with a liability to creditors, heirs or other persons for the full period of two years after distribution, *notwithstanding any transfers of the real estate that may have been made*" (Italics supplied). The plaintiffs–appellees who, directly or indirectly received participation in the estate of Juana Agapito, as extra-judicially settled and distributed in the deed of donation executed by her "only true aunt left", Arcadia Agapito, are certainly the persons deprived of their lawful participation in said estate when defendant, Alfredo Agapito, who, according to the lower court, "has testified that he knowingly and deliberately made the false affidavit", subsequently executed the aforementioned Affidavit of Adjudication adjudicating to himself the two lots in question as the "sole universal heir" of said Juana Agapito.

"But assuming *arguendo*", states appellant, "that the plaintiffs-appellees do come within the purview of Section 4 of Rule 74 of the Rules of Court", this action cannot

prosper because it is not the remedy provided for in said section, that is, "compel the settlement of the estate in courts in the manner hereinafter provided for the purpose of satisfying such lawful participation." However, this step cannot be taken, in the first place, because Alfredo Agapito who adjudicated unto himself the lots referred to is not an heir or legatee as contemplated in the above-quoted portion of Section 1 of Rule 74, and in the second place, the estate of Juana Agapito had already been previously settled.

At any rate, the lower court merely ruled that appellant holds the titles to the lots in question subject to the encumbrance embodied in the annotation, and we find said ruling correct.

3. Appellant further claims that the lower court erred in holding that he acquired no rights over, and, therefore, is not the lawful owner of, the lands in dispute because defendant Alfredo Agapito was not the owner thereof.

Upon this point, the lower court said:

"Alfredo Agapito has testified that he knowingly and deliberately made the false affidavit (of adjudication, Exh. B–2) because he wanted to save the land from confiscation by the government for failure to pay taxes. Subsequently, Alfredo Agapito sold the land to Emiliano Reyes for the alleged sum of ₱21,000.00, and the latter in turn sold the same to his brother-in-law, defendant herein, Ramon A. Siytangco, for the sum of ₱8,000.00. Ramon Siytangco, upon purchasing the land in question from Emiliano Reyes, required the said Reyes a bond in the amount of ₱8,000.00 to answer for any claim that may be presented against Transfer Certificates of Title No. 16681 and 16682 then in the name of said Reyes within 2 years from September 10, 1951".

After stating that the fraud committed by Alfredo Agapito was made possible by the failure of the plaintiffs–appellees to take some positive action by way of registration of their documents of ownership or annotation of a cautionary notice of their claim for well nigh 20 years, appellant insists that he is an innocent purchaser for value because he had a right to rely on the principle that there is no other owner of a property registered under the Torrens system than that in whose favor a certificate of title has been issued; he was not required to go behind the register to determine the condition of the property, and he was under no obligation to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate to be the registered owner. Appellant cites various decisions of our High Tribunal from which we gather the following:

"It will be noted that in both of the above cases (Eliason *vs.* Wilburn, 281 U. S. 457 and De la Cruz *vs.* Fabie, 35 Phil. 144) the certificate of title was already in the name of the forger when

the land was sold to an innocent purchaser. In such case the vendee had the right to rely on what appeared in the certificate and, *in the absence of anything to excite suspicion,* was under no obligation to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate to be the registered owner * * *" (Lara et al., *vs.* Ayroso, G. R. No. L-6122, May 31, 1954) (Italics Ours.)

"* * * A person dealing with registered land is not required to go behind the register to determine the condition of the property. *He is only charged with notice of the burdens on the property, which are noted on the face of the register or certificate of title* * * *" (Anderson *vs.* Garcia, 64 Phil. 506, cited in Landig *vs.* U. S. Commercial Co., et al., G. R. No. L-3597, July 31, 1951).

In the present case, appellant acquired the property with the burden thereon noted on the certificates of title, and it appearing that his transferor had nothing to transfer appellant did not acquire anything by his purchase.

WHEREFORE, finding no error in the decision appealed from, we hereby affirm the same.

SO ORDERED.

Martinez and *Piccio, JJ.,* concur.

Judgment affirmed.